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Liability Issues: Tort Reform or Insurance Regulation

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A Report To The 50th Legislature

Joint Interim Subcommittee On Liability Issues

December 1986

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OR INSURANCE REGULATION

A REPORT TO THE 50TH LEGISLATURE

JOINT INTERIM SUBCOMMITTEE
ON LIABILITY ISSUES

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PREFACE

Because this report was published after the legislative session to which it was addressed, a postsession summary is included which reflects legislative action taken by the 50th Legislature on bills that are the subject of the report. Credits shown are for persons involved during the study period.

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF INSURANCE-RELATED PROBLEMS, INCLUDING THE HIGH COST AND UNAVAILABILITY OF LIABILITY INSURANCE, PROPOSALS FOR GENERAL TORT REFORM, AND GENERAL QUESTIONS INVOLVING PUBLIC AND PRIVATE LIABILITY ISSUES; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 50TH LEGISLATURE.

WHEREAS, on December 31, 1985, the Supreme Court of the State of Montana issued the Pfost decision, overturning our sovereign immunity protections and thereby exposing state governmental entities to unlimited civil liability; and

WHEREAS, current circumstances in the insurance industry have made insurance coverage and protection unavailable for many businesses and governmental entities; and

WHEREAS, considerable evidence establishes the difficulty of other businesses and governmental entities to obtain insurance coverage and protection at reasonable rates; and

WHEREAS, the high cost of insurance seriously threatens the provision of certain goods and services to the state's citizens; and

WHEREAS, proposed solutions to the complex problems of insurance coverage and protection and public and private tort liability are not easily identified, and adequate and effective solutions may not be obtainable within the pressures of a special or regular legislative session; and

WHEREAS, a thoughtful and reasoned study of the myriad aspects of insurance costs and availability, tort reform and constitutional amendment proposals, and public and private liability would aid in the solution of these complex issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a special joint interim committee, to which the full subpoena power of the Legislature and the Legislative Council is extended, be assigned to study and to prepare legislation to address:

- (1) insurance problems, including how to make insurance coverage and protection available to Montana citizens at a reasonable cost;
- (2) the effectiveness of various tort reform and constitutional amendment proposals; and
- (3) general questions involving public and private liability, including but not limited to the issues of the collateral source rule, simultaneous pursuit of a bad faith claim with the underlying claim, structured settlements, statutes of limitations, joint and several liability, caps on damage awards, contingent fee arrangements, attorney fees for defense counsel, reinsurance, a state reinsurance fund, insurance marketing assistance, wrongful discharge, punitive damages, and sanctions for filing frivolous lawsuits.

BE IT FURTHER RESOLVED, that money be appropriated to fund the study, and that the committee prepare a report of study findings for the 50th Legislature.

Passed March 29, 1986.

SUMMARY OF SUBCOMMITTEE RECOMMENDATIONS

The Joint Interim Subcommittee on Liability Issues recommends that the 50th Montana Legislature consider enacting:

1. a bill revising the laws relating to comparative negligence and eliminating joint liability;
2. a bill providing for periodic payment of future damages;
3. a bill requiring that the losing party in a lawsuit pay the winning party's attorney fees;
4. a bill granting immunity from suit for officers, directors, employees, and volunteers of nonprofit corporations;
5. a bill providing for mandatory, nonbinding arbitration of civil cases under \$25,000;
6. a bill establishing a flexible system for insurance premium rate regulation; and
7. a bill limiting the grounds for which property or casualty insurance may be canceled or not renewed and requiring notice of cancellation or nonrenewal of property or casualty insurance.

I.

INTRODUCTION

During the March 1986 special session, seven bills were introduced to place referenda on the ballot in the November general election to amend the Montana Constitution to allow the Legislature to place limits on governmental and private liability (Senate Bills 1, 3, 4, 5, and 12 and House Bills 7 and 17). These bills were in response to the December 1985 Supreme Court opinion in Pfost v. Montana, ___ M ___, 713 P.2d 495, 42 St. Rep. 1957 (1985), in which the court invalidated on constitutional grounds the statute that imposed limits on governmental liability. Caps on damages, against private as well as governmental defendants, were perceived as an answer to the insurance crisis. None of the bills received the two-thirds vote of each house needed as constitutional amendments to pass. Also introduced in the March special session was HB 21, which would have established a state reinsurance program to provide reinsurance to insurers willing to write liability insurance in Montana. HB 21 was killed in committee.

After the failure of the above bills, the Legislature authorized appointment of a special interim legislative subcommittee to study the "insurance crisis" and related problems. At that time, Montana and the rest of the country faced an insurance crisis in which liability insurance was either unavailable or unaffordable. During 1985, insurers had reacted to skyrocketing civil liability awards during the previous four years by escalating liability insurance premiums and reducing coverage limits and in many instances, by canceling or refusing to renew liability insurance coverage. By early 1986, many governmental entities, businesses,

professionals, and individual citizens were either without liability insurance coverage at all or faced crushing financial burdens to maintain their coverage, often at reduced limits.

Under SJR 1, a bipartisan panel of four senators and four representatives was appointed in April 1986 to study and prepare legislation to address insurance problems, the effectiveness of tort reform on easing the unavailability and unaffordability problems, and general questions involving public and private liability. This panel of legislators became known as the Joint Interim Subcommittee on Liability Issues.

During its eight-month study, the Subcommittee met five times, considered 27 bills, and recommended seven for consideration by the 1987 Legislature. The remainder of this report reviews the work of the Subcommittee. It is divided into sections according to the Subcommittee's meetings. The final section of the report summarizes the legislation recommended by the Subcommittee.

Additional information on the work of the Subcommittee, including copies of meeting minutes, staff reports, and bills considered by the Subcommittee but not adopted, is available through the Montana Legislative Council, Research Division, State Capitol, Helena, Montana 59620. A list of staff reports is contained in Appendix 1.

Numerous persons representing interested groups, including insurance companies, insurance agents, the Montana Insurance Commissioner's office, doctors, trial lawyers, and defense lawyers, as well as individual citizens, attended and actively participated in public hearings on the liability issues. The Subcommittee thanks these people for their input and assistance.

II.

BACKGROUND OF THE ISSUES

The existence of a liability crisis in Montana and throughout the United States has been documented often and vividly. The examples of skyrocketing damage judgments, escalating liability insurance premiums accompanied by reduced coverage limits, and cancellations or refusals to renew coverage have been cited so often that no one concerned with public policy need be convinced of their reality. Recitation of those incidents will not be repeated here because the magnitude of the problem and its impact upon the economy and society are generally recognized.

Consensus does not extend, however, to the reasons for the problem. From one viewpoint, the underlying cause is a legal system running wild and sharply increasing the number of damage suits, resulting in soaring judgment awards for noneconomic damages and contingent fees for attorneys surpassing the precedential measure of the value of the professional service. From an opposing viewpoint, the root of the problem is perceived to lie in the policies and practices of the insurance industry that during the late 1970s relied on "cash-flow underwriting"--the underpricing of premium dollars for investments in the high interest rate period of the late 1970s and early 1980s. In effect, the insurance industry was relying on investment income to provide profits rather than charging adequate premiums to cover losses and guarantee profits. After interest rates and investment earnings fell precipitously, insurance companies had to try to make up for losses by raising premiums and limiting earnings.

Those who see excesses of the judicial system as the root cause propose sweeping reforms in tort law and abolition or restriction of attorneys' contingent fee system.

Those who perceive the problem as one of imprudent policies within the insurance industry advocate modernization of the insurance code and tighter supervision by state regulatory agencies. Recognizing the interrelationships among the states and their citizens, some observers propose that federal regulations be imposed to bring uniformity into a system that for more than four decades has allowed individual states to supervise insurance almost as if no interstate ramifications were involved.

Some blending of the remedies proposed by each side may be needed to relieve the pains being experienced in Montana.

Judicial Situation

For purposes of this discussion, a tort may be rather loosely defined as a wrongful act other than a contract dispute for which the injured party may receive damages. Germane to the discussion is a determination whether the incidence of tort claims and whether the size of judgments for plaintiffs or of settlements have increased in the past decade at a ratio exceeding inflation or faster than population growth.

The legal profession generally argues that there has been no explosion in the incidence of tort litigation. The members of the Subcommittee were provided with a copy of a study by the Court Statistics and Information Management project of the National Center for State

Courts showing a 4 percent increase--the same rate of growth as the state's population in the same period--in the number of tort cases filed in Montana's district courts from 1981 to 1984. In that same period, the total number of contract cases filed in Montana dropped 25 percent. During that period, the total number of tort, contract, and real property rights case filings in Montana declined by 16 percent.

On the subject of size of judgments, a finding by the Rand Corporation Institute for Civil Justice shows that the median lawsuit verdict in the United States has remained constant since 1959 at \$8,000, after adjustments for inflation.

The National Center for State Courts study found that in aggregate in the 25 states surveyed, litigation of all nature actually declined between 1981 and 1984.

The National Law Journal, on April 28, 1986, reported that the rate of litigation in the United States appears to be about equal to that in other common law jurisdictions, such as England, Australia, and New Zealand.

The Wall Street Journal reported on May 16, 1986, that a study by Tillinghast, Nelson, and Warren, a risk-management firm, revealed that insurers and sued companies nationwide paid in lawyers' fees and tort claims \$66.5 billion in 1984 or 1.76 percent of the gross national product, an increase of 61 percent since 1980. The federal government and many of the states are reacting with legislative proposals to limit damage awards or to reduce costs of litigation by encouraging settlements.

Not everyone, of course, agrees that the results of the litigation explosion are entirely bad. Arguing that the crisis is the creation of liability insurers who raised premiums sharply and unnecessarily, consumer groups and plaintiffs' lawyers say the statistics on jury verdicts are incomplete and ignore the awards that are reduced or thrown out on appeal. The majority of cases never go to trial, and secrecy is usually a condition of pretrial settlement that prevents those generally lower compensations from being included.

Citing the statistics compiled by the National Center for State Courts, a researcher at the University of Wisconsin Law School, Marc Galanter, agrees that the volume of civil cases filed in state courts jumped sharply in comparison with population increase between 1978 and 1981 but has since leveled off at about 15 million annually.

Insurance Issues

Availability of insurance is a linchpin in the orderly functioning of the American commercial system. This availability, however, has been seriously curtailed in recent years.

One industry group, the Independent Insurance Agents of Montana, regularly analyzes and tabulates the reports submitted to the Commissioner's office by each property and casualty insurer and prints an annual statistical report. The 1985 report was available and provided to the Subcommittee before its deliberations were completed.

Roger McGlenn of the Independent Insurance Agents of

Montana says it is very difficult to determine how many companies are active in this state.

Short of formally surrendering its license to do business, a company may reduce or curtail business in a variety of ways: closing offices, dismissing agents, increasing premiums above competition, or limiting lines, for example.

McGlenn also pointed out that each insurer files a rate schedule with the Commissioners' office, but the rates reported are top limits, and in many cases premiums actually charged are lower, sometimes substantially, because of discounts, coverage restrictions, endorsements, or competitive situations.

To demonstrate the gravity of the situation in Montana, McGlenn cites the following facts in his organization's compilation of 1984 statistical figures.

Loss ratios, not including operating expense or investment income, on specific types of insurance were:

- Medical malpractice 105.3 percent (\$4,480,000 premiums and \$4,716,000 direct incurred losses)
- Liability other than auto 135.9% (\$19,574,000 premiums and \$26,605,000 direct incurred losses)
- Automobile liability:
 - Other private passenger 87.4 percent (\$67,427,000 premiums and \$58,943,000 direct incurred losses)

- Other commercial 102.5 percent (\$23,143,000 premiums and \$23,721,000 direct incurred losses)

The direct incurred losses include reserves. Operating expenses, which are not included above, are 32 percent higher in Montana than the national average, McGlenn said.

Abby Livingston, writing in the May 1986 edition of Management Review in an article titled "The Liability Crisis--Companies Run for Cover", propounds the possibility that the current crisis may be only a cyclical low and that recovery may follow naturally as the insurance companies' mistakes and imprudent actions are rectified. This theory holds responsible the cash-flow underwriting of the 1970s when poor risks were covered at low premiums with the intention of generating funds to deposit in high-interest accounts. The subsequent decline of interest rates pulled down investment profits. Coupled with rising judgment awards, the earnings decline created a cash shortage that resulted in the current insurance capacity shortage and higher premiums.

Since most insurers design their coverages to be marketed in national or regional settings McGlenn points out, Montana, with only about .3 percent of the U.S. property/casualty business, is not an important consideration in companies' planning processes. With its immense area and sparse, scattered population, Montana's needs have small impact on the overall insurance market.

Reinsurance Vacuum

A significant element of the liability insurance crisis is the withdrawal from the American market of a number of large European insurers who had been the most active reinsurers. The National Law Journal, on April 28, 1986, commented that the key decisions on the insurance market are made by the reinsurers in London.

A reinsurer is one whose function is to share in a particular coverage with the original insurer by accepting a portion of the risk for a portion of the premium. By thus laying off part of its original risk to another carrier, the original insurer is able to participate in covering other risks. Lacking the ability to transfer at least a share of the risk to a reinsurer, the original insurer's coverage capacity is soon dissipated.

European insurers, typified by groups such as Lloyds of London, are showing increased reluctance in recent months to reinsure U.S. liability risks.

Since insurers for the most part are private entities who put their own resources in jeopardy to share another's risks with hope of profit from a variety of coverages rather than from any single exposure, government has traditionally not involved itself in reinsurance.

The alleviation of the insurance crisis will depend to a considerable extent on the degree to which reinsurers are attracted back to the market.

Insurance Capacity Reduction

A nuance of the insurance industry that is unknown to or misunderstood by the general public is the concept of capacity, which is a function of an increasing premium scale that in effect reduces the volume of coverage that an insurer may offer.

As Elaine Knapp explained in the March/April issue of State Government News, the reduced surpluses of insurers combined with higher premiums reduce the availability of insurance. Under most states' regulations, a company can write insurance yielding total premiums of no more than three times its surplus.

The fact that general liability insurance premiums increased 71 percent in 1985 means a corresponding reduction in the total volume of coverage available from the same total of surplus.

III.

SUMMARY OF SUBCOMMITTEE MEETINGS AND ACTIVITIES

The following section summarizes the Subcommittee's meetings and related events. A more detailed account of Subcommittee action can be found in the meeting minutes available through the Legislative Council, Research Division, State Capitol, Helena, Montana 59620.

III-1. MEETING #1: ORGANIZATIONAL MEETING

The Subcommittee met for the first time on June 14, 1986, to organize for the interim. After members elected a chairman and vice-chairman, staff presented the following background reports: an introduction to the liability issues study, a background report on the legal issues pertinent to the study, and a proposed study design and work plan.

Following the staff's presentations, the members heard testimony from the Montana Insurance Commissioner, Andrea Bennett, and other interested persons regarding the scope of the study and the role of the Subcommittee. Several witnesses urged the Subcommittee to consider specific kinds of tort reform as a means to remedy the "liability crisis". The Subcommittee was advised by Commissioner Bennett that if the Legislature chose to grant the Commissioner's office authority for insurance regulatory reform, the Legislature would have to provide additional resources to implement the reforms. All witnesses pledged their cooperation and assistance in gathering information. (Note: A difference can be noted in the way the problem is characterized by the various parties. Those who principally advocate tort reform invariably refer to the problem as the "liability crisis" while others generally refer to the "insurance

crisis". Both terms are used in this report without particular significance intended to be attached by the reader.)

During discussion of its meeting schedule, the members of the Subcommittee expressed concern about its limited time in light of the complexity of the problem and the enormous amount of information being generated by interested groups on a national as well as state basis. Each of the two major areas of concern, tort reform and insurance regulatory reform, could legitimately be the focus of a separate, full-length interim study. In addition to the limited amount of time, six months compared to the usual 18 to 24 months for most interim studies, the Subcommittee's time was further restrained by the fact that at the time of the first meeting, two petitions were being circulated throughout the state to place constitutional amendments dealing with liability issues on the November general election ballot.

One petition dealt with the Legislature's authority over governmental liability. (This petition did not receive enough signatures to be placed on the ballot.) The other, dealt with the Legislature's authority over private liability. (This petition was placed on the ballot as CI-30 and passed in November by a narrow margin. See Final Note on page 51.) Because passage or failure of the initiatives would determine the Legislature's authority to enact certain types of tort reform, the Subcommittee could not make reasoned and informed recommendations on tort reform until after the November 4 election. Because of these time constraints and because of the complexity of the two major subject areas, it was determined that the Subcommittee would not have the time to conduct a study in the traditional sense.

It was determined that the Subcommittee could make the best use of its time and resources by assuming the role of taking testimony from all interested parties, considering the numerous bills expected to be proposed, and aggressively encouraging the major interest groups to reach consensus and compromise on the major issues. It was felt that the Subcommittee should focus on specific issues and that its best contribution to the 50th Legislature would be to narrow down to a manageable number the large number of insurance- and liability-related bills to be presented in the 1987 legislative session and particularly to force consensus and compromise among the major interest groups.

In light of the above, the Subcommittee decided to hold a one-day meeting in August; a two-day meeting in September, with the second day for public testimony; a one-day meeting in November after the election; and a one-day meeting in December at the time of the party caucuses. However, the Subcommittee was forced to change its meeting schedule due to developments and scheduling conflicts that arose during the interim.

Before ending its first meeting, the Subcommittee discussed the need for specific Montana insurance information. The Subcommittee voted to send a questionnaire to all insurance carriers doing business in Montana. The questionnaire was to require 1985 information regarding such things as loss ratio data and number of out-of-court settlements. An informal subcommittee of two members was appointed to work with the Subcommittee staff and the staff of the Insurance Department to develop a questionnaire.

III-2. MEETING #2: DEBATE ON LIABILITY ISSUES

During the June 1986 special session, the Subcommittee had an opportunity to hear a presentation by consumer advocate Ralph Nader, representing the National Insurance Consumer Organization, and Bill Molmen, representing the American Insurance Association. Although the Subcommittee did not have a meeting scheduled for June, it took advantage of the presence of Mr. Nader and Mr. Molmen in Helena to hear a debate between the two regarding the insurance/liability crisis. The hurriedly scheduled meeting was held in the Senate Judiciary hearing room and was well attended by the general public, other legislators, and interested groups. The Subcommittee did not take testimony after the hour-long debate or conduct other business because of limited time during the special session and the demands of other business. The following is a short summary of the positions of the two speakers. A verbatim transcript of the debate is available from the Legislative Council, Research Division, State Capitol, Helena, Montana 59620.

Mr. Nader: The current insurance crisis is a result of insurance industry practices--or, specifically, a premium price war during the high interest rate period of the early 1980s. Once the 10-year insurance cycle bottomed out in 1984, the industry looked around for a scapegoat and chose the civil liability system. The insurance industry as a whole is quite profitable, and while profits are up, companies pay no federal taxes and are exempt from federal antitrust regulation. This is a privileged, powerful industry increasingly uninterested in cost prevention. The industry pushes tort reform to keep its profits high at the expense of victims who have no one to represent their rights, other than the

conscience of legislators. Passing tort reform does not guarantee that premium rates will go down; in fact, in several states, just the opposite has happened. State legislators must not be stampeded and must not let themselves be subjected to extortion by the insurance industry. Instead of tort reform, legislators should look at insurance regulatory reform--reform that will flatten out the insurance cycle and provide group liability insurance at reduced rates. Legislators should also consider authorizing the Insurance Commissioner to investigate the possibility of refunds for businesses and professions that have been ripped off by skyrocketing premiums. Two years ago in California, the doctors negotiated a \$57 million refund from Traveler's Insurance Company for overpricing malpractice premium rates. Refunds, not just insurance industry reform, should be on the minds of people in state government. Legislators should not allow themselves to be manipulated, abused, and extorted for no reason other than the price wars and greed of the casualty property insurance industry with its tax-exempt profits.

Mr. Molmen: Data provided by the Insurance Services Office (ISO) documents the insurance industry's current problems: the liability crisis, the growth in losses, and the decrease in premiums during the beginning part of the '80s. There is something seriously wrong with the American tort system. This is not just insurance industry propaganda. The insurance industry structure is that of a fragmented, highly competitive industry. There is no marketing leader, no price leader, and nothing monopolistic about its competitive structure. The industry is so competitive that high interest rates drive prices down and further down. There was no single insurer that could halt the competitive drive downward. From 1979 to 1983, for example, commercial liability

insurance-paid losses increased 130 percent, while premiums didn't increase until 1984 and then only 18 percent. Mr. Nader and others were not demanding that insurance companies hold their prices up during the early 1980s; in fact, they were demanding ever greater recognition of investment income at that time. This just shows that no one in 1980, not insurers, insurance commissioners, or consumer advocates, could have anticipated the problems that became clear in 1984. Every year insurance industry investment income increased and reached record heights until 1984, when underwriting losses finally exceeded investment income. Investment income had been increasing at \$2 billion a year. But losses--losses generated by the tort system--had been increasing at an average of \$4 billion a year, each setting new records. Finally, losses outstripped investment income for the first time ever, and insurers were forced to retrench.

Looking at the tort system, while the number of cases filed in the U.S. remains flat, the serious cases are increasing, and the dollars are increasing. The question becomes, "Can the U.S. afford a "Rolls Royce" tort system?" For example, recovery is now allowed against innocent manufacturers who could not have known they were creating a defective product given the science of their day. The same logic applies to manufacturers of alcohol for alcoholism and drunk driving accidents. The potential is unbelievable. The industry proposes tort reform, such as eliminating joint and several liability (the deep pocket), limits on attorney contingent fees, and changes in the collateral source rule, which are not major changes in the system, to return the system to a healthy one.

III-3. MEETING #3: DEVELOPMENT OF THE ISSUES

The Subcommittee held its third meeting on August 15, 1986. The staff presented the following reports: the liability insurance survey; tort reform--action in other states and on the federal level; insurance regulation; and risk management, reinsurance, and alternative dispute resolution. In addition, the Subcommittee heard a report from Insurance Commissioner Andrea Bennett and proposals from interested persons and groups on approaches to liability issues.

This subsection of the report summarizes the staff reports and testimony heard by the Subcommittee and summarizes the legislation supported by the various interest groups.

Action in Other States and Congress

Approximately 24 states have enacted caps of some kind on recovery; some legislation is limited to medical malpractice cases, some to governmental immunity, some to liquor liability, and some address only noneconomic damages.

Statutes relating to noneconomic damages have been enacted in nine states. Six states have addressed public liability, four have addressed liquor liability, and six have addressed medical malpractice in terms of caps on damages.

Eight states have addressed the collateral source rule, and 11 have addressed the doctrine of joint and several liability. Regarding limiting attorney contingent fees, structured settlements, punitive damages, and frivolous

suits, each has been addressed by five or six states. Seventeen states have adopted some kind of insurance reform ranging from better reporting requirements to restrictions on policy cancellations and the formation of joint underwriting associations.

At the specific request of Subcommittee members, the recent legislation in Colorado, Washington, and Florida was reviewed. Colorado's recent legislation reduces awards from collateral sources and limits damages from noneconomic losses to \$250,000, leaving a window for the court to raise the award to \$500,000 in certain cases. Joint and several liability is eliminated and punitive damages are limited.

Washington enacted caps for noneconomic damages in a formula based on average wages, abolished joint and several liability, and authorized structured settlements for jury judgments in excess of \$100,000.

Florida recently enacted a very comprehensive bill that includes tort reform and insurance regulation. Noneconomic damages are capped at \$450,000, limits are placed on pleadings for punitive damages, and caps are placed on punitive damages. Florida has modified joint and several liability by authorizing periodic payment for sums in excess of \$250,000. Financial institutions are authorized to participate in reinsurance through insurance exchanges. In addition, the bill contained controversial insurance regulation. Insurance rates are frozen from July 1, 1986, to January 1, 1987. A 40 percent rollback is required on premiums for three months, and all insurers are required to file new rates by January 1, 1987. The insurance department's rate review and enforcing authority are increased. Insurance companies have sued to enjoin enforcement of the law, so

it is tied up in the courts. The insurers are fighting the law because of the insurance regulation provisions.

On the federal level, the main areas of action are: (1) risk retention, which relates to product liability; (2) tort reform; and (3) insurance regulation. Approximately 100 bills concerning reform have been introduced in Congress to address the liability problem. However, the staff of the National Conference of State Legislatures has stated that it is not likely that Congress will pass any legislation on tort reform in 1986, with the possible exception of the expansion of the Risk Retention Act to cover liability insurance.

COMMENTS BY ANDREA BENNETT, COMMISSIONER OF INSURANCE,
STATE AUDITOR

Commissioner Bennett testified that she supports:

- 1) elimination of joint liability except in cases where the injured party is totally without fault;
- 2) modification of the collateral source rule;
- 3) structured settlements;
- 4) limiting attorney fees on a sliding fee scale;
- 5) payment of punitive damages to the state;
- 6) legislation to define what constitutes "bad faith";
- 7) enforcement of the existing Unfair Trade Practices Act to ensure compliance with the standards; and

- 8) providing sufficient staffing and budget to the Insurance Department to allow it to have a position of strength to regulate the insurance companies doing business in this state and to enforce the provisions of the insurance code.

PROPOSALS FROM INTERESTED PERSONS AND GROUPS ON
APPROACHES TO LIABILITY ISSUES

ROBERT ZEMAN, NATIONAL ASSOCIATION OF INDEPENDENT
INSURERS (NAII): NAII suggests that:

- 1) the rule of joint and several liability be abolished except where the plaintiff was not contributorily negligent;
- 2) reasonable limits be placed on noneconomic damages, as concepts such as "pain and suffering" are inherently unascertainable with precision, which would still leave the plaintiff's unfettered right to recover full compensatory damage with respect to his/her pecuniary loss, such as medical benefits, lost wages, etc.;
- 3) punitive damages be abolished. The harm punitive damages cause society in the form of increased premiums and tax costs when a government entity is hit with a punitive claim is far outweighed by the benefits.
- 4) structured settlements be used to guarantee that the funds will be available to meet the victims' needs as they arise. Verdicts over a specified amount should be payable through a structured settlement at the option of the defendant.

- 5) the collateral source rule be reformed where the jury and judge all understand the collateral sources and that the court be required to offset such payments so that the claimant only gets one recovery; and
- 6) standards be clarified upon which the insurance company can be held liable in "bad faith" cases.

SHARON MORRISON, MONTANA TRIAL LAWYERS ASSOCIATION
(MTLA): MTLA supports:

- 1) additional staff for the Insurance Commissioner's office;
- 2) no caps on recovery;
- 3) a state reinsurance program;
- 4) no amendment of the joint and several liability rule;
- 5) no change in the collateral source rule;
- 6) structured settlements;
- 7) no limitation of attorney contingency fees; and
- 8) a surtax on punitive damage awards in insurance Unfair Claims Practices Act cases, which would cause Montana to receive the tax ahead of the federal income tax.

DENNIS LOPACH, MONTANA LIABILITY COALITION: The Coalition's priorities are:

- 1) abolition of joint and several liability;
- 2) abolition of or capping punitive damages at a realistic level;
- 3) reform with respect to the insurance "bad faith" and third party actions;
- 4) reform with respect to the wrongful discharge action;
- 5) some type of limitations with respect to contingency fees;
- 6) periodic payments; and
- 7) reform of the collateral source rule.

GERALD NEELY, MONTANA MEDICAL ASSOCIATION (MMA): MMA proposes:

- 1) an apportionment of the damages between the defendants and plaintiff according to degree of fault, limited to noneconomic damages only (the concept of joint and several liability would remain the same as to economic damages);
- 2) periodic payment of future damages to plaintiffs in awards in excess of a specified amount, such as \$50,000;
- 3) in cases involving more than \$15,000 in damages, a mandatory reduction by the court of the award by the amount of certain collateral payments (this

proposal abolishes the right of subrogation unless it is otherwise required by federal law);

- 4) the regulation and disclosure of attorney fees for plaintiff and defense with a statutory reverse sliding scale; and
- 5) relative to frivolous claims, under very specified and limited circumstances, the successful prevailing party be allowed to recover attorney fees. If the opposing party is unable to pay, the opposing party's attorney would have to pay.

JOHN STEVENSON, MONTANA ASSOCIATION OF DEFENSE COUNSEL (MADC): MADC proposes:

- 1) limiting the collateral source rule;
- 2) restricting joint and several liability;
- 3) proposing a broader statute on comparative fault;
- 4) eliminating emotional distress in business tort cases where there is no physical injury or threat of physical injury;
- 5) limiting wrongful termination suits to situations where the termination has been in violation of the policy or contract;
- 6) simplifying statutes of limitations in court actions;
- 7) restricting "bad faith" claims to the items specified in the Unfair Trade Practices Act;

- 8) abolishing "bad faith" liability because creating rights for employees should be done legislatively; and
- 9) suggesting a single type of action for wrongful death and survivor actions.

CONRAD HILPERT, CONSULTING ENGINEER, suggested that:

- 1) a plaintiff who brings an unsuccessful suit should have to pay the defendant's attorney fees;
- 2) product liability suits should not be allowed to be brought for injuries that occur after the reasonable life expectancy of the product;
- 3) there should be only one defendant per complaint;
- 4) no limits be placed on awards in liability cases; and
- 5) no limits be placed on attorney fees because such limits cannot be enforced.

ROGER MCGLENN, MONTANA INDEPENDENT INSURANCE AGENTS ASSOCIATION (MIIAA):

- 1) The MIIAA supports the recommendations of the Governor's Economic Development Council Subcommittee on Insurance.
- 2) The "bad faith" action against insurance companies remains a very serious problem in Montana even after the April Ronald V. Fode v. Farmers Insurance Exchange decision, which modified the 1983 Klaudt v. Flink decision that initially created the

problem. MIIAA feels it is necessary to establish guideline standards and a clear definition in statute relating to "bad faith" action against insurance companies and will provide suggested guidelines.

- 3) MIIAA recommends that a bill be passed clearly establishing that punitive damages are not covered by insurance contracts. The \$5 million or 1 percent of net worth cap for punitive damages is still excessive.

GEORGE BENNETT, MONTANA BANKERS' ASSOCIATION: The Legislature has to decide policy concerning conduct of people in a negotiation, in termination, and in breach of a contract. Return these matters to the contract area defining those special exceptions to protect people. Protect the employee with a comprehensive wrongful discharge act. Return the contract area to where it was before.

The Subcommittee concluded the meeting by setting a deadline of September 15, 1986, for interested parties to submit proposed legislation to the staff for review before the September 26, 1986, meeting.

III-4. MEETING #4: PROPOSED LEGISLATION

The purpose of the September 26, 1986, meeting was to review and solicit public testimony on proposed legislation that had been submitted by interested parties. As noted in an earlier section, the Subcommittee had previously determined not to take action on any bills

before the November 4 election because of the constitutional amendment relating to liability that was on the ballot (CI-30). Twenty-seven bills were presented to the Subcommittee for its consideration. In addition, the staff presented a report on the results of the survey of liability insurance carriers that had been requested by the Subcommittee at its first meeting. This subsection of the report summarizes the survey report and the proposed legislation. For convenience, the 27 bills are grouped by subject matter under the two main headings of tort reform and insurance regulation. (A more detailed summary of the testimony in support of the proposed bills may be found in the Subcommittee minutes of the September 26 meeting.)

Staff Report on Preliminary Findings on Survey of Liability Insurance Carriers

As a result of the Subcommittee's request, the staff, in cooperation with the Insurance Commissioner's staff, prepared and circulated a liability insurance survey to all property and casualty insurers in Montana. The intent of the survey was to determine the availability of liability insurance in Montana, considering such areas as the basic premium rates charged for various types of liability coverage, insurer's number of claims filed and paid, loss experience, operating expenses, loss reserve adequacy, and investment activities.

Results of the survey, circulated by the Commissioner of Insurance at the request of the Subcommittee, were judged to be inconclusive. Almost 750 survey forms were mailed to insurance companies on July 19, with a request for return by August 29.

As of September 9, returns received totaled 382, of which 77 contained sufficient information to be useful, but even some of those were not entirely responsive or qualified their answers.

Generally, staff found that the data provided was either inconsistent or incomplete.

If the Legislature believes such data is needed to address liability issues during the next crisis, it should consider modifying reporting requirements.

Review of Proposed Bills on Tort Reform and Insurance Regulation

The discussion of each bill is preceded by a summary prepared by the Subcommittee staff.

The following is an index of where discussion begins on the subjects addressed by the various bills.

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TORT REFORM

I. COLLATERAL SOURCE

LC 9977 - American Insurance Association (AIA)

This bill reduces a plaintiff's recovery by the amount of the payment from the collateral source less any insurance premiums paid by the plaintiff to obtain benefits. The bill would not allow evidence to go to the jury on collateral source payments; the judge would

be given the information and would reduce the jury award accordingly.

Bill Molmen, AIA, testified that in many tort cases now, the damages that are awarded are duplicate damages, and the Association's intention is to make the tort system secondary in payment from collateral sources. Evidence such as the financial condition of the defendant would not be allowed.

LC 9993 - Montana Medical Association (MMA)

This bill applies to cases in which the award is over \$15,000. The award would be reduced by the amount of collateral payment but to not less than 50 percent of the award.

Gerald Neely, MMA, testified that the concept of elimination of the collateral source rule has been endorsed by many groups, such as the AFL-CIO and the American Bar Association. The concept is nearly universally acclaimed as a clear method of seeing the causal relationship between the problems of the current tort system and the cost and availability of insurance. The concept of collateral source payments has never been held unconstitutional in any state.

II. JOINT AND SEVERAL LIABILITY

LC 9992 - Montana Medical Association

This bill eliminates joint and several liability only for noneconomic damages and only for defendants who are more liable than the plaintiff for the noneconomic damages.

Gerald Neely testified that LC 9992 comes into play only under circumstances in which the plaintiff is at fault and only in circumstances in which noneconomic damages are involved, and then only in circumstances in which the defendant's fault is less than that of the plaintiff. In those circumstances, the concept of joint and several liability is abolished. This is a fairly limited proposal. Other states have enacted this type of legislation with some differences, and this bill is probably less restrictive than legislation enacted by other states.

III. COMPARATIVE NEGLIGENCE

LC 9991 - Montana Association of Defense Counsel (MADC)

This bill also addresses joint and several liability. It changes comparative negligence to comparative fault. "Fault" is defined as certain types of actions. Liability is several only, and a defendant would be liable only for the degree of fault for which he/she is found liable.

Randy Bishop, MADC, testified that this bill expands the concept of negligence to follow what MADC believes to be the clear trend in Montana law to apply the comparative negligence "not greater than" rule to cases dealing with a broad range of tort recoveries. The term "comparative fault", rather than "comparative negligence", would include assumption of risk and other similar defense doctrines.

LC 9996 - Montana Trial Lawyers Association (MTLA)

This is a "pure" comparative negligence bill that amends the comparative negligence laws to provide that a

plaintiff may sue a defendant regardless of how liable the plaintiff is. The plaintiff's award would be reduced by his/her degree of negligence. The bill would allow suits in which a plaintiff is almost totally liable for his/her own injuries.

Karl Englund, MTLA, testified that the intent of this bill is to extend the concept of apportioned fault to the plaintiff as well as the defendant.

IV. DAMAGES - NONECONOMIC, PUNITIVE, AND PERIODIC PAYMENT OF FUTURE DAMAGES

A. Noneconomic Damages

LC 9983 - Montana Association of Defense Counsel

This bill eliminates damages for emotional and mental distress except in cases where there is actual physical injury to the plaintiff.

Randy Bishop testified that this bill was proposed because negligent infliction of emotional distress is very difficult to evaluate, there are no guidelines, and the bill therefore eliminates this as a cause of action.

B. Punitive Damages

LC 9982 - American Insurance Association

This bill allows punitive damages only for a defendant who knowingly or intentionally inflicted injury. It would not allow punitive damages in cases of gross negligence or for breaches of contract. The judge rather than the jury would set the amount of the award.

Bill Molmen testified that the bill attempts to define situations in which punitive damages would be appropriate. The intent is to recognize that punitive damages are awarded because a defendant's actions were criminal in nature. The jury will make the determination of whether punitive damages should be awarded, and the judge will determine the amount of the award. The defendant's financial condition will not be disclosed until it is decided whether punitive damages should be awarded. Guidelines are given as to how much the award should be.

LC 9984 - Montana Association of Defense Counsel

This bill allows punitive damages only in cases of actual fraud or actual malice. The judge would decide the amount of damages to be awarded.

Randy Bishop testified that the position of MADC is that while the purpose of the 1985 amendments to the punitive damages law is clear, there is a better way to address the question of punitive damages. This bill sets out those instances in which punitive damages could be awarded. To differentiate LC 9984 from LC 9982 submitted by the AIA, AIA's bill, on page 2, refers to recovery in cases of hatred or spite or where a party has acted knowingly or intentionally in flagrant disregard of a party's legal rights. These are new terms to Montana law, and therefore MADC feels that these terms should be avoided. It is better to rely upon terminology that is common in Montana law, and MADC looked to Montana law to provide clear and concise definitions of what would be considered culpable conduct that would give rise to a claim for punitive damages. MADC's purpose is to raise the standard of culpable

conduct into the area where everyone would recognize it as something that a person should be punished for.

C. Periodic Payment of Future Damages

LC 9986 - Montana Medical Association

This bill provides that in cases in which the award is over \$50,000, the defendant could request and the judge could allow periodic payment of future damages rather than a lump-sum payment. The periodic payment would be for the life of the plaintiff or the term of the injury.

Gerald Neely testified that the periodic payment concept has never been found to be unconstitutional in any state. It is actuarially determinable what the impact on availability of insurance would be. This legislation is in effect in 23 states, not including states that may have passed such legislation in 1986.

V. ATTORNEY FEES

LC 9978 - Conrad Hilpert, Consulting Engineer

This bill provides that the losing party in a civil action would pay the attorney fees of the winning party.

Hilpert testified that it is unfair that a defendant who is found innocent should have to pay anything for defending himself against a claim that wasn't just. Very often a company decides it is cheaper to pay off a plaintiff than to fight the case to its conclusion. If the law provided that the loser had to pay all costs, the defending company would pursue the case through the court system.

LC 9987 - Montana Medical Association

This bill sets the schedule for contingency fees. It provides that whenever an attorney takes a case on a contingency basis, the attorney would be limited to fees provided in the schedule. The bill applies to both the plaintiff and the defendant.

This bill expands on LC 9994 and additionally covers the difficult area of defense attorney fees. About 49 percent of the premium dollar in professional liability is consumed by defense fees and plaintiff fees. The concept of this bill is that under certain circumstances if there were a judgment in a trial situation, the court could raise or lower the attorney fees of either party and would have to take into account, among other factors, whether an attorney abused the discovery process. It is difficult to legislate defense attorney fees, and this bill attempts to address this problem. This bill also details limited circumstances in which reasonable attorney fees would be awarded to the prevailing party. If the losing party could not afford the fees, its attorney would have to pay the fees and a bond would have to be posted.

LC 9994 - Montana Medical Association

Gerald Neely testified that this is a reverse sliding scale contingency fee schedule in which as the dollar amount of recovery increases the percentage of attorney fees would decrease. As an example, on a \$1 million recovery, the fee could amount to 34.5 percent of that. This bill would relate the amount of recovery to the amount of work that an attorney puts in, because very often the amount of work an attorney does for a very large award isn't necessarily much more than for a

smaller case. This would provide savings to the carrier and to the plaintiff.

VI. SPECIFIC CAUSES OF ACTION - WRONGFUL TERMINATION, WRONGFUL DEATH, AND BAD FAITH

A. Wrongful Termination

LC 9980 - Montana Association of Defense Counsel

This bill eliminates most civil remedies for wrongful termination from employment and establishes a procedure under which such cases must be brought. This bill provides specific circumstances under which a wrongful termination action may be brought: (1) a "whistle blower action", in which the employee brings to the attention of public officials wrongdoing on the part of the employer that results in the employee's discharge; (2) the employee was required by the employer as a provision of employment to violate public policy; and (3) the employee had been employed by the same employer for at least 1,000 hours each year for five consecutive years and was earning less than \$100,000 a year at the time of termination.

Barry Hjort, MADC, testified that MADC has some concern regarding the uncertainty and lack of standards that currently exist in the law regarding what constitutes wrongful termination. Prior to the Gates case in 1980, employers and employees each had the right to terminate employment at will. Following the Gates case, that is no longer the situation. There are now two separate theories--the tort of wrongful termination and the alleged infringement of the covenant of good faith and fair dealing.

B. Wrongful Death

LC 9985 - Montana Association of Defense Counsel

This bill provides that in cases of wrongful death, only one action could be brought, and that action would have to be brought by the personal representative of the decedent's estate. The personal representative would bring the suit and seek damages for the decedent's pain and suffering before death and in the same case would sue for damages for injuries occasioned to others because of the wrongful death. Limits are set on the amount of damages that can be sought.

Randy Bishop testified that MADC believes the changes suggested will simplify the procedure rather than modify any of the rights of persons bringing claims in the event of the death of another individual. The bill combines into one cause of action all elements of damages now available under two separate causes of action in Montana law. MADC hopes this bill will eliminate confusion but will not eliminate or reduce avenues of recovery that are presently available.

C. Bad Faith

LC 9995 - Montana Association of Defense Counsel

This bill abolishes civil actions for bad faith and for breach of covenant of good faith and fair dealing. The bill delays proceedings in a bad faith action in insurance settlement cases until the liability has been determined in the underlying case.

Randy Bishop testified that this bill attempts to bring clarity to an area of law that in the last few years has become one of the most actively litigated. MADC believes that the Legislature, as representatives of the people, can best determine which laws are in the best interests of society. In many respects the bill codifies the law of bad faith that has been created by the courts. The purpose of the bill is to place limitations upon what right of recovery is available under the private cause of action. MADC believes that the Legislature, rather than the Supreme Court, should decide what new types of recovery should be available because the Legislature is more representative of the people.

VII. MISCELLANEOUS

A. Immunity for Officers and Directors of Nonprofit Corporations

LC 9975 - Subcommittee on Liability Issues

This Subcommittee bill was drafted at the request of Senator Christiaens. It provides immunity from liability for officers, directors, and employees of nonprofit corporations. The bill was drafted using Wyoming's law as a model. This bill would be unconstitutional unless CI-30 passes. (See Final Note on page 51.)

LC 9976 - Subcommittee on Liability Issues

This bill provides immunity from liability if a nonprofit corporation is insured and applies to officers, directors, and employees of the corporation. This bill does not apply to school boards and

governmental entities but could be so amended if the Subcommittee desires. Provision is made for amounts of insurance a corporation would have to carry. This bill was drafted at the request of Senator Christiaens. Maryland's law was used as a model.

B. Arbitration

LC 9981 - Subcommittee on Liability Issues

This bill provides that if a district judge determines that an amount in controversy in a civil case is less than \$25,000, the case may be submitted to arbitration. If the amount exceeds \$25,000, the case may be submitted to arbitration upon consent of the parties. Thirty days after the case is submitted, the judge shall appoint an arbitrator to hear the case. The arbitration hearing must be conducted in the court. Following the hearing, the arbitrator shall file his/her decision with the district court. If within 20 days after that filing no request is made for a trial de novo, the arbitrator's award is entered as the judgment of the court. Any party to the case may request a trial de novo as to both law and fact. During the trial there can be no reference to the arbitration proceedings or to an award made. The bill also requests that the Supreme Court adopt rules concerning the arbitration of cases, specifically selecting and compensating arbitrators, and also regarding the conducting of arbitration hearings.

C. Statutes of Limitations

LC 9979 - Conrad Hilpert

This bill provides a statute of limitations on lawsuits

against a provider of a product or service after the reasonable life of the product or service.

INSURANCE REGULATION

VIII. RATES

A. Disclosure of Loss and Expense Experience (Reporting)

LC 9989 - Montana Trial Lawyers Association

This bill requires property and casualty insurance companies to disclose loss and expense experience data so that the Commissioner of Insurance can determine the appropriateness of rates.

B. Flex-Rating (Rate Regulation)

LC 9990 - Montana Trial Lawyers Association

This bill allows the Commissioner of Insurance by rule to set up limitations beyond which insurance companies may not raise their rates without the approval of the Commissioner. If a company wished to raise its rates beyond the limitation, prior approval would have to be granted by the Commissioner and a public hearing would have to be held before approval could be granted.

Karl Englund testified that LC 9989 and LC 9990 are designed to do two things: (1) to get some detailed information on the insurance industry and its claims experience and profitability experience in Montana; and (2) to provide fair and appropriate rates for Montana insurance consumers.

IX. Notice of Cancellation or Nonrenewal

LC 9988 - Subcommittee on Liability Issues.

This bill requires an insurance company to provide notice before cancellation or nonrenewal of insurance. The Subcommittee had previously asked if this bill would be necessary because rules on cancellation and non-renewal of insurance had already been adopted by the Insurance Commissioner. There is a distinction between this bill and the rules in that the rules allow cancellation after notice. The bill is more prohibitive and does not allow cancellation.

LC 9998 - Montana Trial Lawyers Association

With slight differences, this bill is very similar to the Subcommittee bill, LC 9988.

Karl Englund testified that this bill would limit the ability of an insurance company to cancel, and this would eliminate the unfairness to a policyholder who has entered into a contract for a policy for a specific term only to find that he no longer has insurance. The bill was also designed to correct the problem of inadequate notice of nonrenewal or renewal at a substantially higher premium. This bill will permit nonrenewal but only with adequate notice. Section 1 provides four reasons why an insurance policy can be canceled during its term: (1) nonpayment of premium; (2) fraud or material misrepresentation; (3) violation of any of the terms of the policy; and (4) substantial increase in hazard. A substantial increase in hazard would require the approval of the Insurance Commissioner before a policy could be canceled.

X. REPEAL OF ANTIGROUP LAWS

LC 9997 - Subcommittee on Liability Issues

This bill allows insurance companies to offer preferred group rates on medical malpractice and commercial risk insurance. The bill was drafted at the request of a Subcommittee member and is patterned after a suggestion by Bob Hunter, National Insurance Consumer Association. Mr. Hunter suggests that one way to approach the tort insurance crisis would be to eliminate the antigroup statutes. Montana's statute is 33-18-207, MCA, and it provides that for certain kinds of insurance, liability being one of them, no insurance company may offer preferred rates to fictitious groups. LC 9997 amends 33-18-207, MCA, to add two classes, medical malpractice liability and casualty insurance on commercial risk, to the exceptions in the statute. Other requirements are participation in a plan of risk management and reasonable rates to ensure that there is no unfair discrimination against nongroup members.

Alternative to LC 9997 - Subcommittee on Liability Issues (unnumbered)

This bill is based on Florida law. It authorizes the establishment of self-insurance groups.

XI. REINSURANCE

LC 44 - Subcommittee on Liability Issues

The bill that authorized this study included consideration of legislation on reinsurance. LC 44 is Representative Dorothy Bradley's bill from the March

1986 special session, and it provides for a state reinsurance pool. The bill is similar to LC 9999, the trial lawyers' bill, but it does not provide for an interstate pool. The state would set up a fund and offer reinsurance to insurance companies on risks above a certain level. The funding of the pool would be from sources such as a loan from the in-state investment fund, premiums charged to insurance companies for reinsurance, a surcharge applied to property and casualty insurers, interest on the investments, and 50 percent of punitive damages assessed in civil cases.

LC 9999 - Montana Trial Lawyers Association

This bill is similar to the state reinsurance pool provided for in LC 44, but it would be a multi-state pool.

Karl Englund testified that LC 9999 proposes to pool resources with other states for a reinsurance program. The reinsurance pool idea is working in other areas of insurance. The Montana Bar Association is in the process of establishing an interstate pool with several other states to provide insurance for bar members.

Valencia Lane, staff attorney, informed the Subcommittee that NAAI and MIIAA have endorsed the bills submitted by MADC.

III-5. MEETING #5: FINAL RECOMMENDATIONS

The Subcommittee met December 12, 1986, to review and discuss the proposed legislation and to select legislation for committee sponsorship. The Subcommittee selected seven bills to be drafted and introduced in the

50th legislative session as committee bills. These bills were:

- LC 9991 (SB 51) - comparative fault and joint and several liability (MADC)
- LC 9986 (SB 48) - periodic payments - amended (MMA)
- LC 9978 (SB 50) - losing party pays attorney fees (Hilpert)
- LC 9975 (SB 49) - immunity for officers and directors of nonprofit corporations - amended (Subcommittee)
- LC 9981 (HB 70) - arbitration - amended (Subcommittee)
- LC 9990 (SB 52) - flex-rating (MTLA)
- LC 9950 (HB 254)- notice of insurance cancellation and nonrenewal (Insurance Commissioner)

(LC 9950 was proposed by the Insurance Commissioner's office as an alternative to LC 9988 and LC 9998. LC 9950 is a codification of the Insurance Commissioner's recent administrative rules on cancellation and nonrenewal.)

The action on the other bills was as follows:

- LC 9977 - motion to adopt failed on a tie vote
- LC 9993 - no motion
- LC 9992 - no motion
- LC 9996 - no motion
- LC 9983 - motion to adopt substitute motion to not adopt passed 5 to 2
- LC 9982 - not passed
- LC 9984 - motion to adopt failed on a tie vote

-- LC 9987 - motion to amend withdrawn; not passed
-- LC 9994 - motion to adopt failed
-- LC 9980 - motion to adopt failed on tie vote
-- LC 9985 - not passed
-- LC 9995 - motion to adopt failed on tie vote
-- LC 9976 - not passed
-- LC 9979 - motion to adopt failed
-- LC 9989 - motion to adopt failed on tie vote
-- LC 9988 - no motion (defer to LC 9950)
-- LC 9998 - no motion (defer to LC 9950)
-- LC 9997 - motion to take no action passed
-- Unnumbered - motion to take no action passed
-- LC 44 - no motion
-- LC 9999 - no motion

IV.

SUMMARY OF SUBCOMMITTEE BILLS

The following is a summary of the seven bills selected by the Subcommittee to be drafted and introduced in the 50th legislative session as committee bills.

IV-1. LC 9991 (SB 51)

This bill amends the statutes relating to comparative negligence and joint and several liability. It substitutes the doctrine of "comparative fault" for the doctrine of "comparative negligence". The purpose for this change is to expand the application of the comparative negligence concept to a greater range and type of cases. Under current law, this concept applies only to tort negligence cases. Under the amendment, the concept would apply to other kinds of cases, such as strict liability, breach of warranty, assumption of the risk, misuse of a product, and failure to avoid or mitigate an injury. This bill would also eliminate joint liability and provide that each defendant is severally liable based on his/her apportioned degree of fault. The bill provides that when the degree of fault is determined, the trier of fact is to consider the degree of fault of all persons that contributed to the injury and not just that of the parties to the lawsuit, as is generally the case under current law.

IV-2. LC 9986 (SB 48)

This bill provides for periodic payment of future damages in actions for personal injury, property damage, or wrongful death if the amount of future damages awarded equals or exceeds \$50,000. In such cases, if

either party requests the judge to order periodic payments of future damages, the judge shall so order. The periodic payments are to continue for the life of the recipient or during continuance of the compensable injury. Payment is to be made through establishment of a trust fund or purchase of an inflation-indexed annuity. There is a provision for requesting a modification to take care of survivors of a person who dies before receiving his/her whole award or if the recipient outlives the periodic payments. Under current law, periodic payment of future damages is not specifically provided for in statute except in workers' compensation cases; however, this type of structured settlement is commonly used in Montana tort lawsuits.

IV-3. LC 9978 (SB 50)

This bill requires that in civil actions, the losing party shall pay the attorney fees of the prevailing party. The judge would determine the prevailing party for purposes of this bill. This is the "English rule" on attorney fees. This bill was prepared for the Subcommittee at the suggestion of an interested individual who testified before the Subcommittee. Under current law, a person may not recover attorney fees from another party unless there is a specific statute that allows the recovery or unless there is an applicable contract provision that allows the recovery. There are several statutes in the Montana Code Annotated in which recovery of attorney fees is allowed.

IV-4. LC 9975 (SB 49)

This bill abolishes civil liability actions against officers, directors, employees, and volunteers of nonprofit corporations. This bill would eliminate the

need of such corporations to purchase officers and directors liability insurance. This bill was drafted for the Subcommittee at its request and was modeled after the Wyoming statute. The immunity applies to individuals only; the corporation would still be liable for the acts of its agents.

IV-5. LC 9981 (HB 70)

This bill would change the law relating to disposition of small lawsuits. In cases in which the amount in controversy is in the judge's opinion less than \$25,000, the judge, upon consent of the parties, may submit the case to nonbinding arbitration.

IV-6. LC 9990 (SB 52)

This bill would change the current method of insurance rate regulation in Montana for property and casualty insurance. Under current law, Montana is a "file and use" state with respect to insurance rate regulation. Insurance companies must file the rates they propose to charge for insurance policies with the Insurance Commissioner's office before they can use those rates in Montana. Once the rates have been filed, the insurance company can begin to use them. The Insurance Commissioner has the authority to review the rates and may disapprove a rate if it is found to be "inadequate, excessive, or unfairly discriminatory" (these terms are undefined). However, currently and historically, the Insurance Commissioner's office does not have and has never had sufficient staff, particularly actuarial staff, to adequately review rates.

This bill would adopt a combination of a "file and use" type of regulation with a "prior approval" type of

regulation. The bill would allow the Insurance Commissioner to adopt rules that establish a "band" or range within which an insurer could raise or lower rates without prior approval of the Commissioner. For example, the Commissioner might establish a limitation of 20 percent. An insurer could not raise its rates more than 20 percent or lower them more than 20 percent without prior approval of the Commissioner. The Commissioner would have to hold a hearing before approving or disapproving a rate change outside the "band".

IV-7. LC 9950 (HB 254)

This is a codification of the Insurance Commissioner's rules on cancellation and nonrenewal of property and casualty insurance. The bill would require notice before an insurance policy could be canceled and would prohibit mid-term cancellation except for specific reasons. The bill would also regulate nonrenewal of insurance policies and would prohibit insurance companies from canceling a homeowner's insurance policy because the insured operates a day-care facility from the insured's home.

V.
POSTSCRIPT

Following is a summary of legislative action taken on the seven committee bills during the 1987 legislative session. This discussion addresses the changes made by the Legislature to the introduced bills as described on pages 45 - 48 of this report.

V-1. LC 9991 (SB 51)

This bill was substantially amended by the Legislature. The doctrine of "comparative fault" was dropped from the bill, and the bill was amended to retain joint liability for any party to a lawsuit whose negligence was determined to be more than 50 percent of the combined negligence of all persons responsible for the injury. Under the final bill, any party found to be 50 percent or less negligent would be severally liable only. Effective July 1, 1987.

V-2. LC 9986 (SB 48)

This bill was amended to apply to cases in which future damages equal or exceed \$100,000, rather than \$50,000 as in the original version of the bill. The bill was also amended to make the award of periodic payment of future damages discretionary with the judge if he finds it to be in the best interests of the claimant, rather than mandatory upon the request of either party. The Legislature put in a requirement for the purchase of an annuity, which would allow the judgment for periodic payment of future damages against the judgment debtor to

be satisfied at the time of purchase of an annuity rather than to continue as an ongoing obligation. The Legislature also inserted a limitation on assignment of periodic payments. Effective October 1, 1987.

V-3. LC 9978 (SB 50)

Failed to pass the Legislature. Adverse Senate Judiciary Committee report adopted by the Senate on January 23, 1987.

V-4. LC 9975 (SB 49)

This bill was amended by the Legislature to delete "employee" from the list of persons granted immunity by the bill. The exception for "intentional torts or illegal acts" was changed to an exception for "willful or wanton misconduct". The Legislature inserted a definition of "nonprofit corporation". Effective April 9, 1987.

V-5. LC 9981 (HB 70)

Failed to pass the Legislature. Bill killed in House.

V-6. LC 9990 (SB 52)

Failed to pass the Legislature. In House, tabled in Business and Labor Committee on March 17, 1987.

V-7. LC 9950 (HB 254)

This bill passed in essentially the same form as introduced. Effective October 1, 1987.

FINAL NOTE

The validity of all 1987 tort reform measures, including the Subcommittee bills as well as the many other tort reform measures passed by the 50th Legislature, is subject to review in light of the May 22, 1987, Montana Supreme Court decision in State of Montana ex rel. Montana Citizens for the Preservation of Citizens' Rights, et al. vs. Waltermire and Montana Liability Coalition; No. 86-400 (1987).

APPENDIX 1

LIST OF STAFF REPORTS

- Legal Issues: Background Information for Liability Issues Study
- Introduction to the Liability Issues Study
- Risk Management, State Reinsurance, and Alternative Dispute Resolution
- Compilation of Reports Concerning Tort Reform and Insurance Regulation

APPENDIX 2

LC 9991 (Senate Bill No. 51)

(Introduced - Reference Bill)

1	SENATE	BILL NO.	51
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2 INTRODUCED BY B. BROWN
3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON LIABILITY ISSUES

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
7 LAWS RELATING TO LIABILITY; SUBSTITUTING THE DOCTRINE OF
8 COMPARATIVE FAULT FOR THE DOCTRINE OF COMPARATIVE
9 NEGLIGENCE; ELIMINATING JOINT LIABILITY; PROVIDING FOR THE
10 APPORTIONMENT OF FAULT AMONG JOINT TORTFEASORS; AND AMENDING
11 SECTIONS 27-1-702 AND 27-1-703, MCA."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-702, MCA, is amended to read:

"27-1-702. Comparative negligence fault -- extent to which contributory negligence fault bars recovery in action for damages. (1) Contributory negligence fault shall not bar recovery in an action by any person or his legal representative to recover damages for negligence--resulting in death or injury to person or property if such negligence contributory fault was not greater than the negligence fault of the person or the combined fault of all persons against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence fault attributable to the person recovering or for whose

1 contributed-as-a-proximate-cause-to--the--injury--complained
 2 of,--the--trier--of-fact--shall--apportion--the-degree-of-fault
 3 among-such-persons--contribution-shall--be--proportional--to
 4 the--negligence--of--the--parties--against--whom-recovery-is
 5 allowed--Nothing-contained-in-this-section--shall--make--any
 6 party-indispensable-pursuant-to-Rule-19--M-R-Civ-P-
 7 (3)--it--for-any-reason-all-or-part-of-the-contribution
 8 from-a-party-liable-for--contribution--cannot--be--obtained,
 9 each--of--the-other-parties-against-whom-recovery-is-allowed
 10 is-liable-to-contribute-a-proportional-part--of--the--unpaid
 11 portion--of-the-noncontributing-party's-share-and-may-obtain
 12 judgment-in-a-pending-or-subsequent-action-for--contribution
 13 from-the-noncontributing-party.

14 (1) In an action involving the fault of more than one
 15 person, the trier of fact shall determine the percentage of
 16 fault attributable to each person whose actions contributed
 17 to the damages. Such persons may include but need not be
 18 limited to the claimant, injured person, defendants,
 19 third-party defendants, persons released from liability by
 20 the claimant, persons immune from liability to the claimant,
 21 and any other persons who have a defense against the
 22 claimant.

23 (2) Judgment must be entered against each defendant in
 24 an amount representing his proportionate share of the
 25 claimant's total damages unless the defendant:

1 (a) has been released by the claimant;
 2 (b) is immune from liability to the claimant; or
 3 (c) has prevailed against the claimant on any other
 4 individual defense.
 5 (3) The liability of a defendant is several only,
 6 except that one defendant may be responsible for the fault
 7 of another if both acted in concert in contributing to the
 8 claimant's damages or if one defendant acted as an agent of
 9 the other."

-End-

SENATE BILL NO. 51

INTRODUCED BY B. BROWN, THAYER, THOMAS, J. BROWN, IVERSON

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY; SUBSTITUTING THE DOCTRINE OF COMPARATIVE FAULT FOR THE DOCTRINE OF PROPORTIONATE FAULT; ELIMINATING JOINT LIABILITY; PROVIDING FOR THE APPOINTMENT OF PAULT AMONG JOINT TORTFEASORS IN CERTAIN CASES; AND AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-702, MCA, is amended to read:

"27-1-702. Comparative negligence fault NEGLIGENCE -- extent to which contributory negligence fault NEGLIGENCE bars recovery in action for damages. §§ Contributory negligence fault NEGLIGENCE shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in NEGLIGENCE RESULTING IN death or injury to person or property if such negligence contributory fault NEGLIGENCE was not greater than the negligence fault NEGLIGENCE of the person or the combined fault NEGLIGENCE of all persons against whom recovery is

sought, but any damages allowed shall be diminished in the proportion to the amount of negligence fault NEGLIGENCE attributable to the person recovering or for whose death or injury to person or property recovery is made.

§2}--"Fault" includes acts or omissions that are in any measure wrongful, unlawful, negligent, or reckless or that subject a person to strict tort liability. The term also includes:

§a}--breach of warranty;

§b}--assumption of risk;

§c}--misuse of a product; and

§d}--failure to avoid or mitigate an injury, including failure to use safety devices."

Section 2. Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants jointly and severally liable -- right of contribution -- apportionment of fault -- DETERMINATION OF LIABILITY. §§ Whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

§2}--On motion of any party against whom a claim is asserted for negligence resulting in death or injury to

1 person or property, any other person whose negligence may
2 have contributed as a proximate cause to the injury
3 complained of may be joined as an additional party to the
4 action. Whenever more than one person is found to have
5 contributed as a proximate cause to the injury complained
6 of, the trier of fact shall apportion the degree of fault
7 among such persons. Contribution shall be proportional to
8 the negligence of the parties against whom recovery is
9 allowed. Nothing contained in this section shall make any
10 party indispensable pursuant to Rule 19, M.R.Civ.P.
11 {3} If for any reason all or part of the contribution
12 from a party liable for contribution cannot be obtained,
13 each of the other parties against whom recovery is allowed
14 is liable to contribute a proportional part of the unpaid
15 portion of the noncontributing party's share and may obtain
16 judgment in a pending or subsequent action for contribution
17 from the noncontributing party.

18 {1} In an action involving the fault of more than one
19 person, the trier of fact shall determine the percentage of
20 fault attributable to each person whose actions contributed
21 to the damages. Such persons may include but need not be
22 limited to the claimant, injured person, defendants,
23 third party defendants, persons released from liability by
24 the claimant, persons immune from liability to the claimant,
25 and any other persons who have a defense against the

1 claimant;
2 {2} Judgment must be entered against each defendant in
3 an amount representing his proportionate share of the
4 claimant's total damages unless the defendant:
5 {a} has been released by the claimant;
6 {b} is immune from liability to the claimant; or
7 {c} has prevailed against the claimant on any other
8 individual defense;
9 {3} The liability of a defendant is several only
10 except that one defendant may be responsible for the fault
11 of another if both acted in concert in contributing to the
12 claimant's damages or if one defendant acted as an agent of
13 the other. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND
14 (3), WHENEVER THE NEGLIGENCE OF ANY PARTY IN ANY ACTION IS
15 AN ISSUE, EACH PARTY AGAINST WHOM RECOVERY MAY BE ALLOWED IS
16 JOINTLY AND SEVERALLY LIABLE FOR THE AMOUNT THAT MAY BE
17 AWARDED TO THE CLAIMANT BUT HAS THE RIGHT OF CONTRIBUTION
18 FROM ANY OTHER PERSON WHOSE NEGLIGENCE MAY HAVE CONTRIBUTED
19 AS A PROXIMATE CAUSE TO THE INJURY COMPLAINED OF.
20 (2) ANY PARTY WHOSE NEGLIGENCE IS DETERMINED TO BE 25%
21 OR LESS OF THE COMBINED NEGLIGENCE OF ALL PERSONS
22 DESCRIBED IN SUBSECTION (4) IS SEVERALLY LIABLE ONLY AND IS
23 RESPONSIBLE ONLY FOR THE AMOUNT OF NEGLIGENCE ATTRIBUTABLE
24 TO HIM, EXCEPT AS PROVIDED IN SUBSECTION (3). THE REMAINING
25 PARTIES ARE JOINTLY AND SEVERALLY LIABLE FOR THE TOTAL LESS

1 THE AMOUNT ATTRIBUTABLE TO THE CLAIMANT.
 2 (3) A PARTY MAY BE JOINTLY LIABLE FOR ALL DAMAGES
 3 CAUSED BY THE NEGLIGENCE OF ANOTHER IF BOTH ACTED IN CONCERT
 4 IN CONTRIBUTING TO THE CLAIMANT'S DAMAGES OR IF ONE PARTY
 5 ACTED AS AN AGENT OF THE OTHER.

6 (4) ON MOTION OF ANY PARTY AGAINST WHOM A CLAIM IS
 7 ASSERTED FOR NEGLIGENCE RESULTING IN DEATH OR INJURY TO
 8 PERSON OR PROPERTY, ANY OTHER PERSON WHOSE NEGLIGENCE MAY
 9 HAVE CONTRIBUTED AS A PROXIMATE CAUSE TO THE INJURY
 10 COMPLAINED OF MAY BE JOINED AS AN ADDITIONAL PARTY TO THE
 11 ACTION. FOR PURPOSES OF DETERMINING THE PERCENTAGE OF
 12 LIABILITY ATTRIBUTABLE TO EACH PARTY WHOSE ACTION
 13 CONTRIBUTED TO THE INJURY COMPLAINED OF, THE TRIER OF FACT
 14 SHALL CONSIDER THE NEGLIGENCE OF THE CLAIMANT, INJURED
 15 PERSON, DEFENDANTS, THIRD-PARTY DEFENDANTS, PERSONS RELEASED
 16 FROM LIABILITY BY THE CLAIMANT, PERSONS IMMUNE FROM
 17 LIABILITY TO THE CLAIMANT, AND ANY OTHER PERSONS WHO HAVE A
 18 DEFENSE AGAINST THE CLAIMANT. THE TRIER OF FACT SHALL
 19 APPORTION THE PERCENTAGE OF NEGLIGENCE OF ALL SUCH PERSONS.
 20 HOWEVER, IN ATTRIBUTING NEGLIGENCE AMONG PERSONS, THE TRIER
 21 OF FACT MAY NOT CONSIDER OR DETERMINE ANY AMOUNT OF
 22 NEGLIGENCE ON THE PART OF ANY INJURED PERSON'S EMPLOYER OR
 23 COEMPLOYEE TO THE EXTENT THAT SUCH EMPLOYER OR COEMPLOYEE
 24 HAS TORT IMMUNITY UNDER THE WORKERS' COMPENSATION ACT OR THE
 25 OCCUPATIONAL DISEASE ACT OF THIS STATE, OF ANY OTHER STATE.

1 OR OF THE FEDERAL GOVERNMENT. CONTRIBUTION SHALL BE
 2 PROPORTIONAL TO THE LIABILITY OF THE PARTIES AGAINST WHOM
 3 RECOVERY IS ALLOWED. NOTHING CONTAINED IN THIS SECTION
 4 SHALL MAKE ANY PARTY INDISPENSABLE PURSUANT TO RULE 19,
 5 MONTANA RULES OF CIVIL PROCEDURE.

6 (5) IF FOR ANY REASON ALL OR PART OF THE CONTRIBUTION
 7 FROM A PARTY LIABLE FOR CONTRIBUTION CANNOT BE OBTAINED,
 8 EACH OF THE OTHER PARTIES SHALL CONTRIBUTE A PROPORTIONAL
 9 PART OF THE UNPAID PORTION OF THE NONCONTRIBUTING PARTY'S
 10 SHARE AND MAY OBTAIN JUDGMENT IN A PENDING OR SUBSEQUENT
 11 ACTION FOR CONTRIBUTION FROM THE NONCONTRIBUTING PARTY. A
 12 PARTY FOUND TO BE 25% 50% OR LESS NEGLIGENT FOR THE INJURY
 13 COMPLAINED OF IS LIABLE FOR CONTRIBUTION UNDER THIS SECTION
 14 ONLY UP TO THE PERCENTAGE OF NEGLIGENCE ATTRIBUTED TO HIM."

15 NEW SECTION. SECTION 3. SEVERABILITY. IF A PART OF
 16 THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM
 17 THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS
 18 INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS
 19 IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM
 20 THE INVALID APPLICATIONS.

21 NEW SECTION. SECTION 4. EFFECTIVE DATE --
 22 APPLICABILITY. (1) THIS ACT IS EFFECTIVE JULY 1, 1987.

23 (2) THIS ACT APPLIES TO CAUSES OF ACTIONS ARISING ON
 24 OR AFTER JULY 1, 1987.

-End-

APPENDIX 3

LC 9986 (Senate Bill No. 48)

(Introduced - Amended Reference Bill)

SENATE BILL NO. 48

INTRODUCED BY B. HAN

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PERIODIC PAYMENT OF FUTURE DAMAGES IN AN ACTION FOR PERSONAL INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH IF THE AMOUNT OF FUTURE DAMAGES AWARDED EQUALS OR EXCEEDS \$50,000; AND PROVIDING FOR A SEPARATE STATEMENT AND METHOD OF CALCULATION OF ATTORNEY FEES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. In [sections 2 through 5]:

(1) "future damages" includes damages for future medical treatment, care, or custody, loss of future earnings, loss of bodily function, and future pain and suffering of the judgment creditor; and

(2) "periodic payment" means the payment of money or delivery of other property to the judgment creditor at regular intervals.

Section 2. Request for periodic payment of future damages. (1) A party to an action for personal injury, property damage, or wrongful death in which \$50,000 or more of future damages is awarded may, prior to the entry of

judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon such request, the court shall enter an order for periodic payment of future damages.

(2) A court ordering the payment of future damages by periodic payments shall make a specific finding as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages.

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

(4) A court ordering periodic payment of future damages shall order that the payments be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the establishment of a trust fund or the purchase of an inflation-indexed annuity.

(5) A court ordering periodic payments must order a judgment debtor who is not an insurer licensed to do business in this state to post security if payments are made through a trust fund. Upon termination of periodic payments, the court shall order the security returned to the judgment

1 debtor.

2 Section 3. Extension of periodic payments. If the
3 judgment creditor lives beyond the date of the final
4 periodic payment and the payments were not based on an
5 inflation-indexed annuity, the judgment creditor may apply
6 to the court for additional payments for economic damages.
7 Additional payments must be calculated at the annual rate at
8 which payments were calculated under the original order for
9 periodic payments.

10 Section 4. Payment of attorney fees. A judgment must
11 order payment of attorney fees and litigation expenses
12 separately from an order for periodic payments of future
13 damages. The attorney fees and expenses must be paid either
14 in a lump sum or by periodic payments pursuant to an
15 agreement entered into between the claimant and his
16 attorney. An agreement for the immediate lump-sum payment of
17 that portion of the attorney fees incurred to recover future
18 damages to be paid by periodic payments must be calculated
19 on the basis of the present value of the future damages.

20 Section 5. Failure to pay -- penalty. If the court
21 finds that the judgment debtor has unjustifiably exhibited a
22 continuing pattern of failing to make periodic payments, the
23 court shall find the judgment debtor in contempt of court
24 and order the judgment debtor to pay past-due payments and
25 the judgment creditor's damages caused by the failure to

1 make payments, including court costs and attorney fees.
2 Section 6. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

-End-

SENATE BILL NO. 48

INTRODUCED BY B. BROWN, ADDY, THAYER

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PERIODIC PAYMENT OF FUTURE DAMAGES IN AN ACTION FOR PERSONAL INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH IF THE AMOUNT OF FUTURE DAMAGES AWARDED EQUALS OR EXCEEDS \$50,000 \$100,000 AND IF PERIODIC PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT; AND PROVIDING FOR A SEPARATE STATEMENT AND METHOD OF CALCULATION OF ATTORNEY FEES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. In [sections 2 through 5] 5

6]:

(1) "future damages" includes damages for future medical treatment, care, or custody, loss of future earnings, ~~loss-of-ability-to-function~~ and future pain and suffering of the judgment creditor; and

(2) "periodic payment" means the payment of money or ~~delivery-of-other-property~~ to the judgment creditor at regular intervals.

SECTION 2. FINDINGS BY TRIER OF FACT -- CIVIL ACTIONS.

IN ANY ACTION FOR PERSONAL INJURY, PROPERTY DAMAGE, OR

WRONGFUL DEATH WHERE LIABILITY IS FOUND AFTER TRIAL AND IN WHICH \$100,000 OR MORE IN FUTURE DAMAGES IS AWARDED TO THE CLAIMANT, THE TRIER OF FACT SHALL MAKE A SEPARATE FINDING AS TO THE AMOUNT OF ANY FUTURE DAMAGES SO AWARDED AND STATE WHETHER THE AMOUNT OF FUTURE DAMAGES HAS BEEN REDUCED TO PRESENT VALUE.

Section 3. Request for periodic payment of future damages. (1) A party to an action for personal injury, property damage, or wrongful death in which \$50,000 \$100,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon such request, the court ~~shall~~ MAY enter an order for periodic payment of future damages IF THE COURT FINDS THAT SUCH PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT. THE TOTAL DOLLAR AMOUNT OF THE ORDERED PERIODIC PAYMENTS MUST EQUAL THE TOTAL DOLLAR AMOUNT OF THE FUTURE DAMAGES THEY REPRESENT WITHOUT A REDUCTION TO PRESENT VALUE.

(2) A court ordering the payment of future damages by periodic payments shall make a specific ~~finding~~ FINDINGS as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages AND AS TO WHETHER AN ORDER FOR PERIODIC PAYMENT OF FUTURE DAMAGES IS IN THE BEST INTERESTS OF THE CLAIMANT. ~~THE COURT SHALL~~

1 MAKE SEPARATE FINDINGS SPECIFYING THE AMOUNT OF:

2 (A) ANY PAST DAMAGES; AND

3 (B) ANY FUTURE DAMAGES;

4 (1) THE PERIOD OR PERIODS OVER WHICH THEY WILL ACCRUE;

5 ON AN ANNUAL BASIS; AND

6 (2) THE DEBITABLE AMOUNT OF FUTURE DAMAGES BOTH BEFORE

7 AND AFTER A REDUCTION TO PRESENT VALUE;

8 (3) The judgment order must specify the recipient or
9 recipients of periodic payments, the dollar amount of the
10 payments, the interval between payments, and the number of
11 payments or the period of time over which payments shall be
12 made.

13 (4) A court ordering periodic payment of future
14 damages shall order that the payments be made, during the
15 life of the judgment creditor or during the continuance of
16 the compensable injury or disability of the judgment
17 creditor, through the establishment of a trust fund or the
18 purchase of an inflation-indexed annuity approved by the

19 COURT. THE ANNUITY MUST BE IN THE FORM OF AN
20 INFLATION-INDEXED ANNUITY CONTRACT PURCHASED FROM A
21 QUALIFIED INSURER THAT, IN THE MOST RECENT EDITION OF A.M.

22 BEST, HAS AN "A" (EXCELLENT) OR HIGHER RATING AND IS IN A
23 CLASS 7 OR HIGHER CLASSIFICATION. THE ANNUITY ALSO SERVES
24 AS ANY REQUIRED SUPERSEDEAS BOND. UPON PURCHASE OF A
25 COURT-APPROVED ANNUITY, THE COURT MAY ORDER THAT THE

1 JUDGMENT IS SATISFIED AND THAT THE JUDGMENT DEBTOR IS
2 DISCHARGED. IF THE JUDGMENT CREDITOR DIES BEFORE ALL
3 PERIODIC PAYMENTS HAVE BEEN MADE, THE REMAINING PAYMENTS
4 BECOME THE PROPERTY OF HIS ESTATE.

5 (5) A court ordering periodic payments must order a
6 judgment debtor who is not an insured licensed estate-do
7 business in this state to post security if payments are made
8 through a trust fund. Upon termination of periodic payments,
9 the court shall order the security returned to the judgment
10 debtor.

11 Section 3. Extension of periodic payments. If the
12 judgment creditor lives beyond the date of the final
13 periodic payment and the payments were not based on an
14 inflation-indexed annuity, the judgment creditor may apply
15 to the court for additional payments for economic damages.
16 Additional payments must be calculated at the annual rate at
17 which payments were calculated under the original order for
18 periodic payments.

19 Section 4. Payment of attorney fees. A judgment must
20 order payment of attorney fees and litigation expenses
21 separately from an order for periodic payments of future
22 damages. The attorney fees and expenses must be paid either
23 in a lump sum or by periodic payments pursuant to an
24 agreement entered into between the claimant and his
25 attorney. An agreement for the immediate lump-sum payment of

1 that portion of the attorney fees incurred to recover future
2 damages to be paid by periodic payments must be calculated
3 on the basis of the present value of the future damages.

4 Section 5. Failure to pay -- penalty. If the court
5 finds that the INSURER THAT SOLD THE ANNUITY TO THE JUDGMENT
6 debtor has unjustifiably exhibited a continuing pattern of
7 failing to make periodic payments, the court shall find the
8 JUDGMENT--debtor INSURER in contempt of court and order the
9 JUDGMENT-debtor INSURER to pay past-due payments and the
10 judgment creditor's damages caused by the failure to make
11 payments, including court costs and attorney fees.

12 SECTION 6. ASSIGNMENT OF PERIODIC INSTALLMENTS. AN
13 ASSIGNMENT OF OR AN AGREEMENT TO ASSIGN ANY RIGHT TO
14 PERIODIC INSTALLMENTS FOR FUTURE DAMAGES CONTAINED IN A
15 JUDGMENT ENTERED UNDER (SECTIONS 1 THROUGH 7 5 6) IS
16 ENFORCEABLE ONLY AS TO AMOUNTS:

17 (1) TO SECURE PAYMENT OF ALIMONY, MAINTENANCE, OR
18 CHILD SUPPORT; OR

19 (2) FOR THE COSTS OF PRODUCTS, SERVICES, OR
20 ACCOMMODATIONS PROVIDED OR TO BE PROVIDED BY THE ASSIGNEE
21 FOR MEDICAL OR OTHER HEALTH CARE; OR.

22 (3) FOR ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION
23 INCURRED IN SECURING THE JUDGMENT.

24 SECTION 7. -- FORM -- OP -- SECURITY -- SATISFACTION -- OP
25 JUDGMENTS -- (1) SECURITY AUTHORIZED OR REQUIRED FOR -- PAYMENT

1 OP -- A -- JUDGMENT -- FOR -- PERIODIC -- INSTALLMENTS -- ENTERED -- IN
2 ACCORDANCE WITH (SECTIONS 1 THROUGH 7) MUST -- BE -- IN -- ONE -- OR
3 MORE -- OF -- THE -- FOLLOWING -- FORMS -- AND -- APPROVED -- BY -- THE -- COURT:

4 (1) A -- BOND -- EXECUTED -- BY -- A -- QUALIFIED -- INSURER;

5 (2) AN -- ANNUITY -- CONTRACT -- EXECUTED -- BY -- A -- QUALIFIED
6 INSURER;

7 (3) EVIDENCE -- OF -- APPLICABLE -- AND -- ESTIMATABLE -- LIABILITY
8 INSURANCE -- WITH -- ONE -- OR -- MORE -- QUALIFIED -- INSURERS;

9 (4) AN -- AGREEMENT -- BY -- ONE -- OR -- MORE -- QUALIFIED -- INSURERS -- TO
10 GUARANTEE -- PAYMENT -- OF -- THE -- JUDGMENT; -- OR

11 (5) ANY -- OTHER -- SATISFACTORY -- FORM -- OF -- SECURITY;

12 (6) SECURITY -- COMPLYING -- WITH -- THIS -- SECTION -- SERVES -- ALSO
13 AS -- ANY -- REQUIRED -- SUPERSEDES -- BOND;

14 (7) IF -- SECURITY -- IS -- POSTED -- EITHER -- UPON -- REQUEST -- OF -- A
15 JUDGMENT -- DEBTOR -- OR -- AS -- REQUIRED -- BY -- (SECTIONS 1 THROUGH 7) -- AND
16 IS -- APPROVED -- UNDER -- A -- FINAL -- JUDGMENT -- ENTERED -- UNDER -- (SECTIONS 1
17 THROUGH 7); -- THE -- COURT -- MAY, -- IN -- ITS -- DISCRETION, -- ORDER -- THAT -- THE
18 JUDGMENT -- IS -- SATISFIED -- AND -- THE -- JUDGMENT -- DEBTOR -- ON -- WHOSE
19 BEHALF -- THE -- SECURITY -- IS -- POSTED -- IS -- DISCHARGED;

20 Section 7. Severability. If a part of this act is
21 invalid, all valid parts that are severable from the invalid
22 part remain in effect. If a part of this act is invalid in
23 one or more of its applications, the part remains in effect
24 in all valid applications that are severable from the
25 invalid applications.

-End-

APPENDIX 4

LC 9978 (Senate Bill No. 50)

(Introduced Bill)

SENATE BILL NO. 50

INTRODUCED BY B. BROWN

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT
REASONABLE ATTORNEY FEES MUST BE AWARDED TO THE PREVAILING
PARTY IN CIVIL LIABILITY ACTIONS; AND PROVIDING AN
APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

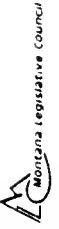
Section 1. Attorney fees recoverable. In any action
for a breach of an obligation not arising from contract,
reasonable attorney fees must be awarded to the prevailing
party. The judge shall determine the prevailing party for
purposes of awarding attorney fees under this section.

Section 2. Codification instruction. Section 1 is
intended to be codified as an integral part of Title 25,
chapter 10, part 3, and the provisions of Title 25, chapter
10, part 3, apply to section 1.

Section 3. Applicability. Section 1 applies to causes
of action arising after the effective date of this act.

-End-

INTRODUCED BILL
SB-50



APPENDIX 5

LC 9975 (Senate Bill No. 49)

(Introduced - Reference Bill)

1	SENATE	BILL NO.	49
2	INTRODUCED BY THAYER		

INTRODUCED BY

THAYER

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING CIVIL LIABILITY ACTIONS AGAINST OFFICERS, DIRECTORS, EMPLOYEES, AND VOLUNTEERS OF NONPROFIT CORPORATIONS IN CERTAIN CASES; AND AMENDING SECTIONS 27-1-701 AND 35-2-411, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Right of action abolished. No officer, director, employee, or volunteer of a nonprofit corporation is individually liable for any action or omission made in the course and scope of his official capacity on behalf of the nonprofit corporation. This section does not apply to liability for intentional torts or illegal acts.

Section 2. Section 27-1-701, MCA, is amended to read:
"27-1-701. Liability for negligence as well as willful
acts. Everyone except as otherwise provided by law, everyone
is responsible not only for the results of his willful acts
but also for an injury occasioned to another by his want of
ordinary care or skill in the management of his property or
person except so far as the latter has willfully or by want

l of ordinary care brought the injury upon himself."

2 Section 3. Section 35-2-411, MCA, is amended to read:

3 "35-2-411. Nonliability of directors, officers, and
4 employees. The directors, officers, and employees of the
5 corporation shall not, as such, be liable on its obligations
6 and shall be immune from civil liability as provided in
7 [section 1]."

-End-

SENATE BILL NO. 49

INTRODUCED BY THAYER, MILES, THOMAS, ADDY, GILBERT,
B. BROWN, HAMMOND, MEYER, HALLIGAN, MCLANE, ANDERSON,
HOFMAN, BECK, JERGESON, LYBECK, MAZUREK.

KEATING, PINSONEAULT, WALKER

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING CIVIL
LIABILITY ACTIONS AGAINST OFFICERS, DIRECTORS, EMPLOYEES,
AND VOLUNTEERS OF NONPROFIT CORPORATIONS IN CERTAIN CASES;
AND AMENDING SECTIONS 27-1-701 AND 35-2-411, MCA;
AND PROVIDING AN APPLICABILITY PROVISION AND AN IMMEDIATE
EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Right of action abolished.

(1) No officer, director, employee, or volunteer of a
nonprofit corporation is individually liable for any action
or omission made in the course and scope of his official
capacity on behalf of the nonprofit corporation. This
section does not apply to liability for intentional torts or
illegal acts willful or wanton misconduct. THE IMMUNITY
GRANTED BY THIS SECTION DOES NOT APPLY TO THE LIABILITY OF A
NONPROFIT CORPORATION.

(2) FOR PURPOSES OF THIS SECTION, "NONPROFIT
CORPORATION" MEANS:

(A) AN ORGANIZATION EXEMPT FROM TAXATION UNDER SECTION

501(C) OF THE INTERNAL REVENUE CODE OF 1954; OR

(B) A CORPORATION INCORPORATED OR ADMITTED UNDER THE
MONTANA NONPROFIT CORPORATION ACT OR ORGANIZATION WHICH IS
ELIGIBLE FOR OR HAS BEEN GRANTED BY THE DEPARTMENT OF
REVENUE TAX EXEMPT STATUS UNDER THE PROVISIONS OF 15-31-102.

Section 2. Section 27-1-701, MCA, is amended to read:
"27-1-701. Liability for negligence as well as willful
acts. Everyone except as otherwise provided by law, everyone
is responsible not only for the results of his willful acts
but also for an injury occasioned to another by his want of
ordinary care or skill in the management of his property or
person except so far as the latter has willfully or by want
of ordinary care brought the injury upon himself."

Section 3. Section 35-2-411, MCA, is amended to read:
"35-2-411. Nonliability of directors, officers, and
employees. The directors, officers, and employees of the
corporation shall not, as such, be liable on its obligations
and shall be immune from civil liability as provided in
Section 11."

NEW SECTION. SECTION 3. EFFECTIVE DATE
APPLICABILITY. THIS ACT IS EFFECTIVE ON PASSAGE AND APPROVAL
AND APPLIES TO CLAIMS ACCRUING AFTER THE EFFECTIVE DATE OF

SB 0049/03

1 THIS ACT.

End

APPENDIX 6

LC 9990 (Senate Bill No. 52)
(Introduced - Third Reading Bill)

1 SENATE BILL NO. 52

2 INTRODUCED BY B. BAKER

3 BY REQUEST OF THE JOINT INTERIM

4 SUBCOMMITTEE ON LIABILITY ISSUES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A FLEXIBLE
7 SYSTEM FOR INSURANCE PREMIUM RATES; REQUIRING PRIOR APPROVAL
8 OF CERTAIN RATES BY THE INSURANCE COMMISSIONER; PROVIDING
9 CRITERIA FOR ESTABLISHING LIMITATIONS ON RATES; AND AMENDING
10 SECTION 33-16-101, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Rate limitations. (1) The
14 commissioner shall by rule establish annual limitations on
15 rate level increases and decreases which may take effect
16 with respect to any market for insurance without his prior
17 approval. The rules must be designed to restore and promote
18 stability in such markets.

19 (2) The commissioner may exempt a particular market
20 from the limitations set forth in the rules upon a
21 determination that in that market competition is sufficient
22 to assure either that rates will not be excessive or that
23 such market is conducted in a manner not resulting in
24 inadequate rates and not destructive of competition or
25 detrimental to the solvency of the insurers. The

1 commissioner shall withdraw or modify an exemption upon a
2 determination that annual limitations are necessary to
3 restore and promote stability in the market.

4 (3) The commissioner shall, whenever he finds it
5 appropriate, hold a hearing, at which representatives of
6 consumers and other interested parties may participate, for
7 the purpose of determining whether an exemption or a
8 withdrawal or modification of an exemption of any market is
9 appropriate.

10 NEW SECTION. Section 2. Considerations in
11 establishing or modifying limitations. Limitations
12 established or modified pursuant to [section 1] may vary by
13 market. In establishing or modifying such limitations, the
14 commissioner shall consider:

15 (1) the extent and nature of competition;

16 (2) the size and significance of the coverage;

17 (3) the level and range of rates and rate changes
18 among insurers;

19 (4) investment and underwriting experience of insurers
20 in Montana;

21 (5) the range of insurance availability;

22 (6) the extent of consumer complaints to the
23 commissioner;

24 (7) the extent of denials and restrictions in
25 coverage;



-2- INTRODUCED BILL

SB-52

1 (8) the volume of cancellations and nonrenewals;
 2 (9) changing conditions in the economic, judicial, and
 3 social environment; and
 4 (10) any other factor the commissioner finds necessary.
 5 NEW SECTION. Section 3. When rate filings effective.
 6 In any market governed by a rule implementing [sections 1
 7 through 3] and not exempted by the commissioner pursuant to
 8 [section 1], filings that produce rate level changes within
 9 the limitations specified in such rule are effective without
 10 prior approval of the commissioner. Filings which produce
 11 rate level changes beyond such limitations are not effective
 12 until approved by the commissioner. Filings which produce
 13 rate level changes beyond such limitations may not be
 14 approved by the commissioner unless the commissioner
 15 determines after notice and hearing that the rates are fair,
 16 reasonable, and in the public interest.

17 Section 4. Section 33-16-101, MCA, is amended to read:
 18 "33-16-101. Purpose and--intent. ~~††~~ The purpose of
 19 this chapter is to promote the public welfare by regulating
 20 insurance rates as herein provided to the end that they
 21 shall not be excessive, inadequate, or unfairly
 22 discriminatory, to authorize the existence and operation of
 23 qualified rating organizations and advisory organizations
 24 and require that specified rating services of such rating
 25 organizations be generally available to all admitted

1 insurers, and to authorize cooperation between insurers in
 2 ratemaking and other related matters.
 3 ~~††)--it-is-the-express-intent-of-this-chapter-to-permit~~
 4 ~~and--encourage--competition--between--insurers--on--a--sound~~
 5 ~~financial--basis--and-nothing-in-this-chapter-is-intended-to~~
 6 ~~give-the-commissioner-power-to--fix--and--determine--a--rate~~
 7 ~~level-by-classification-or-otherwise."~~
 8 NEW SECTION. Section 5. Codification instruction.
 9 Sections 1 through 3 are intended to be codified as an
 10 integral part of Title 33, chapter 16, and the provisions of
 11 Title 33, chapter 16, apply to sections 1 through 3.

-End-

STATEMENT OF INTENT

SENATE BILL 52

1 the bill.

4 A statement of intent is required for this bill because
5 section 1 requires the commissioner of insurance of the
6 state of Montana (commissioner) to establish by rule annual
7 limitations on rate level increases and decreases that may
8 take effect without his prior approval. The legislature
9 intends that the rules, which the commissioner adopts to
10 implement this bill, be designed to restore and promote
11 stability in the specific insurance market that they are
12 meant to regulate.

13 The legislature further intends that the commissioner
14 adopt those rules in accordance with 33-1-313 that grant the
15 commissioner general rulemaking authority and that permit
16 the commissioner:

17 (1) to make only reasonable rules that do not extend,
18 modify, or conflict with any law of this state or with any
19 reasonable implication of those laws; and

20 (2) to make or amend those rules only after a hearing
21 of which notice has been given as required by 33-1-703. The
22 legislature intends that the commissioner, in adopting a
23 rule that establishes or modifies the annual rate level
24 increases and decreases that may take effect without his
25 prior approval, consider the factors listed in section 2 of

SENATE BILL NO. 52

INTRODUCED BY B. BROWN, MILES, HALLIGAN, GILBERT, ADDY

BY REQUEST OF THE JOINT INTERIM

SUBCOMMITTEE ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A FLEXIBLE
SYSTEM FOR INSURANCE PREMIUM RATES; REQUIRING PRIOR APPROVAL
OF CERTAIN RATES BY THE INSURANCE COMMISSIONER; PROVIDING
CRITERIA FOR ESTABLISHING LIMITATIONS ON RATES; AND AMENDING
SECTION 33-16-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Rate limitations. (1) The
commissioner shall by rule establish annual limitations on
rate level increases and decreases which may take effect
with respect to any market for insurance without his prior
approval. The rules must be designed to restore and promote
stability in such markets.

(2) The commissioner may exempt a particular market
from the limitations set forth in the rules upon a
determination that in that market competition is sufficient
to assure either that rates will not be excessive or that
such market is conducted in a manner not resulting in
inadequate rates and not destructive of competition or
detrimental to the solvency of the insurers. The

commissioner shall withdraw or modify an exemption upon a
determination that annual limitations are necessary to
restore and promote stability in the market.

(3) The commissioner shall, whenever he finds it
appropriate, hold a hearing, at which representatives of
consumers and other interested parties may participate, for
the purpose of determining whether an exemption or a
withdrawal or modification of an exemption of any market is
appropriate.

NEW SECTION. Section 2. Considerations in
establishing or modifying limitations. Limitations
established or modified pursuant to [section 1] may vary by
market. In establishing or modifying such limitations, the
commissioner shall consider:

(1) the extent and nature of competition;

(2) the size and significance of the coverage;

(3) the level and range of rates and rate changes
among insurers;

(4) investment and underwriting experience of insurers
in Montana;

(5) the range of insurance availability;

(6) the extent of consumer complaints to the
commissioner;

(7) the extent of denials and restrictions of
coverage;

1 (8) the volume of cancellations and nonrenewals;
 2 (9) changing conditions in the economic, judicial, and
 3 social environment; and
 4 (10) any other factor the commissioner finds necessary.
 5 NEW SECTION. Section 3. When rate filings effective.
 6 In any market governed by a rule implementing [sections 1
 7 through 3] and not exempted by the commissioner pursuant to
 8 [section 1], filings that produce rate level changes within
 9 the limitations specified in such rule are effective without
 10 prior approval of the commissioner. Filings which produce
 11 rate level changes beyond such limitations are not effective
 12 until approved by the commissioner. Filings which produce
 13 rate level changes beyond such limitations may not be
 14 approved by the commissioner unless the commissioner
 15 determines after notice and hearing that the rates are fair,
 16 reasonable, and in the public interest.

17 Section 4. Section 33-16-101, MCA, is amended to read:
 18 "33-16-101. Purpose and--intent. {1} The purpose of
 19 this chapter is to promote the public welfare by regulating
 20 insurance rates as herein provided to the end that they
 21 shall not be excessive, inadequate, or unfairly
 22 discriminatory, to authorize the existence and operation of
 23 qualified rating organizations and advisory organizations
 24 and require that specified rating services of such rating
 25 organizations be generally available to all admitted

1 insurers, and to authorize cooperation between insurers in
 2 ratemaking and other related matters.
 3 {2}--it-is-the-express-intent-of-this-chapter-to-permit
 4 and--encourage--competition--between--insurers--on--a--sound
 5 financial--basis--and-nothing-in-this-chapter-is-intended-to
 6 give-the-commissioner-power-to--fix--and--determine--a--rate
 7 level-by-classification-or-otherwise."
 8 NEW SECTION. Section 5. Codification instruction.
 9 Sections 1 through 3 are intended to be codified as an
 10 integral part of Title 33, chapter 16, and the provisions of
 11 Title 33, chapter 16, apply to sections 1 through 3.

-End-

APPENDIX 7

LC 9981 (House Bill No. 70)

(Introduced Bill)

1
2 INTRODUCED BY _____ HOUSE BILL NO. 70
3 MILES

4 BY REQUEST OF THE JOINT INTERIM
5 SUBCOMMITTEE ON LIABILITY ISSUES

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
7 MANDATORY, NONBINDING ARBITRATION OF CERTAIN CIVIL CASES
8 FILED IN DISTRICT COURT; AND PROVIDING AN APPLICABILITY
9 DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Purpose. The purpose of [sections 1 through
13 6] is to provide for mandatory, nonbinding arbitration to
14 achieve prompt and equitable resolution of certain civil
15 cases filed in district court.

16 Section 2. Submission of cases to arbitration. (1)
17 Notwithstanding the provisions of 27-5-114, a civil case
18 filed in district court must be submitted to arbitration by
19 the district judge if the amount in controversy is in the
20 judge's opinion less than \$25,000 for each plaintiff.

21 (2) If in the judge's opinion the amount in
22 controversy exceeds the amount provided for in subsection
23 (1), the judge, upon consent of the parties to the case, may
24 submit the case to arbitration.

25 Section 3. List of arbitrators -- qualifications --

1 compensation. (1) Each judicial district shall maintain a
2 list of qualified persons who have agreed to serve as
3 arbitrators.

4 (2) To be eligible to serve as an arbitrator, a person
5 must be an attorney admitted to practice law in Montana.

6 (3) An arbitrator is entitled to receive reasonable
7 compensation for his services, not to exceed \$150 a case or
8 \$150 a day, whichever is greater. The parties shall pay the
9 arbitrator's fee and shall share the cost equally, unless
10 the parties agree to apportion the fee differently.

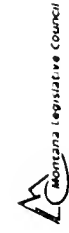
11 Section 4. Appointment of arbitrator -- hearing --
12 decision and award. (1) Within 30 days after a case is
13 submitted to arbitration, the district judge shall assign an
14 arbitrator to hear the case.

15 (2) The arbitration hearing must be conducted in
16 accordance with any rules adopted by the supreme court.

17 (3) Following the hearing, the arbitrator shall file
18 his decision and award in writing with the clerk of the
19 district court.

20 (4) If no request for a trial de novo is made as
21 provided for in (section 5), the arbitrator's award, upon
22 motion of one of the parties, must be entered as the
23 judgment of the district court and has the same force and
24 effect as judgments in other civil actions or proceedings.

25 Section 5. Trial de novo. (1) Within 20 days after the



1 arbitrator's award is filed with the clerk of the district
2 court, a party to the case may request, by filing a written
3 notice with the clerk of the district court, a trial de novo
4 as to both law and fact.

5 (2) No reference may be made to the arbitration
6 hearing or award during the trial de novo.

7 (3) The supreme court may by rule provide for costs
8 and reasonable attorney fees to be assessed against a party
9 appealing from an arbitration award who fails to improve his
10 position on trial de novo.

11 Section 6. Supreme court rules. The supreme court may
12 promulgate rules concerning arbitration of cases as provided
13 for in {sections 1 through 6}, including rules for selecting
14 and compensating arbitrators and for conducting arbitration
15 hearings.

16 Section 7. Severability. If a part of this act is
17 invalid, all valid parts that are severable from the invalid
18 part remain in effect. If a part of this act is invalid in
19 one or more of its applications, the part remains in effect
20 in all valid applications that are severable from the
21 invalid applications.

22 Section 8. Applicability. This act applies to cases
23 filed in district court after the effective date of this
24 act.

-End-

APPENDIX 8

LC 9950 (House Bill No. 254)

(Introduced - Reference Bill)

1
2 INTRODUCED BY *House* BILL NO. *254*
3
4
5

6 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

7 ON LIABILITY ISSUES

8 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE GROUNDS
9 ON WHICH PROPERTY OR CASUALTY INSURANCE MAY BE CANCELED OR
10 NOT RENEWED; AND REQUIRING NOTICE OF CANCELLATION OR
11 NONRENEWAL OF A PROPERTY OR CASUALTY POLICY."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Purpose -- applicability. (1) The purpose
14 of [sections 1 through 9] is to protect the public with
15 regard to insurance transactions that involve cancellation,
16 renewal, nonrenewal, or premium increases on contracts of
17 property or casualty insurance by:

18 (a) regulating the grounds for midterm cancellation of
19 an insurance policy;

20 (b) prohibiting midterm increases in premiums;

21 (c) increasing the opportunity for insureds to shop
22 for replacement or substitute insurance;

23 (d) reducing the opportunity for breach of contract,
24 misrepresentation by omission or untimely disclosure, and
25 unfair discrimination among insureds; and

(e) increasing the opportunity for agents to compete

1 freely.

2 (2) [Sections 1 through 9] apply to those forms of
3 insurance defined in 33-1-206 and 33-1-210, except to the
4 extent they conflict with 33-23-211 through 33-23-214,
5 33-23-301, 33-23-302, and 33-23-401.

6 (3) [Sections 1 through 9] do not limit the activities
7 that may constitute undefined unfair trade practices
8 prohibited by 33-18-1003. The commissioner may apply other
9 provisions of this code to insurance transactions involving
10 cancellation, renewal, nonrenewal, or premium increases on
11 contracts of property or casualty insurance. Policies may
12 provide terms more favorable to insureds than are required
13 by [sections 1 through 9]. The rights provided by [sections
14 1 through 9] are in addition to and do not prejudice any
15 other rights that the insured may have under common law,
16 statutes, or rules.

17 Section 2. Definitions. As used in [sections 1 through
18 9], the following definitions apply unless the context
19 requires otherwise:

20 (1) "Anniversary date" means the month and day that
21 rates, rating plans, and rating systems are initially
22 applied to a policy in effect. The term includes each annual
23 anniversary thereafter unless the insurer establishes a
24 different date by a filing with the commissioner.

25 (2) "Cancellation" means the decision by the insurer

1 to terminate an insurance policy prior to the expiration of
2 its term.

3 (3) "Classification" means an arrangement of insurance
4 risks into an underwriting or rating group according to a
5 classification system used by an insurer as a basis for
6 tabulating statistical experience and determining premium
7 rates.

8 (4) "Classification system" means a schedule of
9 classifications and a rule used by an insurer for
10 determining the classifications applicable to an insured.

11 (5) "Insurer" means an insurer authorized to transact
12 property or casualty insurance in this state.

13 (6) "Premium" means the contractual consideration
14 charged to an insured for insurance for a specified period
15 of time, regardless of the timing of actual charges.

16 (7) "Rate" means a monetary amount applied to the
17 units of exposure assigned to a classification and used by
18 an insurer to determine the premium for an insured.

19 (8) "Rating plan" means a rule used by an insurer to
20 calculate:

21 (a) the premium for an insured; and
22 (b) the parameter values used in such calculation
23 after application of classification premium rates to units
24 of exposure.

25 (9) "Renewal" means an agreement between an insurer

1 and an insured to extend or continue an existing insurance
2 policy for 90 days or more.

3 Section 3. Midterm cancellation. (1) An insurer may
4 not cancel an insurance policy before either the expiration
5 of the agreed term or 1 year from the effective date of the
6 policy or renewal date, whichever is less, except:

7 (a) for reasons specifically allowed by statute;

8 (b) for failure to pay a premium when due; or

9 (c) on grounds stated in the policy which pertain to
10 the following:

11 (i) material misrepresentation;

12 (ii) substantial change in the risk assumed, except to
13 the extent that the insurer should reasonably have foreseen
14 the change or contemplated the risk when the contract was
15 written;

16 (iii) substantial breaches of contractual duties,
17 conditions, or warranties;

18 (iv) determination by the commissioner that
19 continuation of the policy would place the insurer in
20 violation of this code;

21 (v) financial impairment of the insurer; or

22 (vi) any other reason approved by the commissioner.

23 (2) Cancellation under subsection (1) is not effective
24 until 10 days after a notice of cancellation is either
25 delivered or mailed to the insured.

1 (3) Subsections (1) and (2) do not apply to a newly
 2 issued insurance policy if the policy has been in effect
 3 less than 60 days at the time the notice of cancellation is
 4 mailed or delivered. No cancellation under this subsection
 5 is effective until 10 days after the date of delivery or
 6 mailing.

7 (4) If a policy has been issued for a term longer than
 8 1 year and if either the premium is prepaid or an agreed
 9 term is guaranteed for additional premium consideration, the
 10 insurer may not cancel the policy except:

11 (a) for reasons specifically allowed by statute;

12 (b) for failure to pay a premium when due; or

13 (c) on grounds stated in the policy which pertain to
 14 those grounds listed in subsection (1)(c).

15 Section 4. Anniversary cancellation -- anniversary
 16 rate increases. (1) An insurer may issue a policy for a
 17 term longer than 1 year or for an indefinite term if the
 18 policy contains a clause that allows cancellation by the
 19 insurer if the insurer gives notice 30 days prior to an
 20 anniversary date.

21 (2) If a policy has been issued for a term longer than
 22 1 year and for additional premium consideration an annual
 23 premium has been guaranteed, the insurer may not increase
 24 the annual premium for the term of that policy.

25 Section 5. Nonrenewal -- renewal premium. (1) An

1 insured has a right to reasonable notice of nonrenewal.
 2 Unless otherwise provided by statute or unless a longer term
 3 is provided in the policy, at least 30 days prior to the
 4 expiration date provided in the policy, an insurer who does
 5 not intend to renew a policy beyond the agreed expiration
 6 date shall mail or deliver to the insured a notice of such
 7 intention. The insurer shall also mail or deliver a copy to
 8 the insured's agent.

9 (2) An insurer shall give notice of premium due not
 10 more than 60 days or less than 10 days before the due date
 11 of a renewal premium. The notice must clearly state the
 12 effect of nonpayment of the premium on or before the due
 13 date.

14 (3) Subsections (1) and (2) do not apply if:

15 (a) the insured has obtained insurance elsewhere, has
 16 accepted replacement coverage, or has requested or agreed to
 17 nonrenewal; or

18 (b) the policy is expressly designated as
 19 nonrenewable.

20 Section 6. Renewal with altered terms. (1) If an
 21 insurer offers or purports to renew a policy but on less
 22 favorable terms, at a higher rate, or at a higher rating
 23 plan, the new terms, rates, or rating plan take effect on
 24 the policy renewal date only if the insurer has mailed or
 25 delivered notice of the new terms, rates, or rating plan to

1 the insured at least 30 days before the expiration date. If
 2 the insured has not been so notified, he may cancel the
 3 renewal policy within 30 days after receiving it. The
 4 insured shall continue or terminate coverage not less than
 5 30 days after mailing or delivery of the notice. If the
 6 insured terminates the policy within the 30-day period, the
 7 insurer shall calculate earned premium pro rata based upon
 8 the prior policy's rate. The new rate is effective only
 9 after the required 30-day notification period has been met.
 10 If the insured does not terminate the policy, the premium
 11 increase and other changes are effective the day following
 12 the prior policy's expiration or anniversary date.

(2) This section does not apply if:

(a) the change is a rate or rating plan filed with the
 commissioner and applicable to the entire classification or
 classification system to which the policy belongs; or
 (b) the increase in the rate or the rating plan, or
 both, results from a classification change based on the
 altered nature or extent of the risk insured against.

Section 7. Information about grounds of nonrenewal.
 (1) If an insured questions the facts upon which an
 insurer's decision to cancel or not renew is based, the
 insurer shall mail or deliver such information within 15
 working days of receiving a written request from the
 insured. A notice is not effective unless it contains

adequate information about the insured's right to make the
 request.

(2) This section does not apply if the grounds for
 cancellation or nonrenewal is nonpayment of the premium and
 the notice so states.

Section 8. Homeowners insurance not affected by
 day-care operations. (1) No insurer writing homeowners
 insurance in this state may deny an applicant homeowners
 insurance or cancel or refuse to renew a homeowners
 insurance policy covering a dwelling located in this state
 for the principal reason that an insured under the policy
 operates at the insured location a day-care facility, as
 defined in 53-4-501, that satisfies the requirements of
 53-4-508 or 53-4-509.

(2) This section does not prevent an insurer from
 excluding or limiting coverage with respect to liability or
 property losses arising out of an insured's business
 pursuits, including those related to the operation of a
 day-care facility.

Section 9. Unfair trade practices. (1) The failure of
 an insurer to comply with [sections 3 through 8] constitutes
 an unfair trade practice under 33-18-1003.

(2) Midterm premium increases and policy coverage
 reductions not in compliance with [sections 1 through 8]
 that are attempted or executed constitute unfair trade

1 practices under 33-18-1003.

2 Section 10. Extension of authority. Any existing
3 authority of the commissioner of insurance to make rules on
4 the subject of the provisions of this act is extended to the
5 provisions of this act.

6 Section 11. Codification instruction. Sections 1
7 through 9 are intended to be codified as an integral part of
8 Title 33, and the provisions of Title 33 apply to sections 1
9 through 9.

10 Section 12. Severability. If a part of this act is
11 invalid, all valid parts that are severable from the invalid
12 part remain in effect. If a part of this act is invalid in
13 one or more of its applications, the part remains in effect
14 in all valid applications that are severable from the
15 invalid applications.

-End-

1 HOUSE BILL NO. 254

2 INTRODUCED BY THOMAS, B. BROWN

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON LIABILITY ISSUES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE GROUNDS
7 ON WHICH PROPERTY OR CASUALTY INSURANCE MAY BE CANCELED OR
8 NOT RENEWED; AND REQUIRING NOTICE OF CANCELLATION OR
9 NONRENEWAL OF A PROPERTY OR CASUALTY POLICY."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Purpose -- applicability. (1) The purpose
13 of [sections 1 through 9] is to protect the public with
14 regard to insurance transactions that involve cancellation,
15 renewal, nonrenewal, or premium increases on contracts of
16 property or casualty insurance by:

17 (a) regulating the grounds for midterm cancellation of
18 an insurance policy;

19 (b) prohibiting midterm increases in premiums;

20 (c) increasing the opportunity for insureds to shop
21 for replacement or substitute insurance;

22 (d) reducing the opportunity for breach of contract,
23 misrepresentation by omission or untimely disclosure, and
24 unfair discrimination among insureds; and

25 (e) increasing the opportunity for agents to compete

1 freely.

2 (2) [Sections 1 through 9] apply to those forms of
3 insurance defined in 33-1-206 and 33-1-210, except to the
4 extent they conflict with 33-23-211--through--33-23-214,
5 33-23-381, 33-23-382,--and--33-23-401 CHAPTER 23 OF THIS
6 TITLE.

7 (3) [Sections 1 through 9] do not limit the activities
8 that may constitute undefined unfair trade practices
9 prohibited by 33-10-1003. The commissioner may apply other
10 provisions of this code to insurance transactions involving
11 cancellation, renewal, nonrenewal, or premium increases on
12 contracts of property or casualty insurance. Policies may
13 provide terms more favorable to insureds than are required
14 by [sections 1 through 9]. The rights provided by [sections
15 1 through 9] are in addition to and do not prejudice any
16 other rights that the insured may have under common law,
17 statutes, or rules.

18 Section 2. Definitions. As used in [sections 1 through
19 9], the following definitions apply unless the context
20 requires otherwise:

21 (1) "Anniversary date" means the month and day that
22 rates, rating plans, and rating systems are initially
23 applied to a policy in effect. The term includes each annual
24 anniversary thereafter unless the insurer establishes a
25 different date by a filing with the commissioner.

1 (2) "Cancellation" means the decision by the insurer
2 to terminate an insurance policy prior to the expiration of
3 its term.

4 (3) "Classification" means an arrangement of insurance
5 risks into an underwriting or rating group according to a
6 classification system used by an insurer as a basis for
7 tabulating statistical experience and determining premium
8 rates.

9 (4) "Classification system" means a schedule of
10 classifications and a rule used by an insurer for
11 determining the classifications applicable to an insured.

12 (5) "Insurer" means an insurer authorized to transact
13 property or casualty insurance in this state.

14 (6) "Premium" means the contractual consideration
15 charged to an insured for insurance for a specified period
16 of time, regardless of the timing of actual charges.

17 (7) "Rate" means a monetary amount applied to the
18 units of exposure assigned to a classification and used by
19 an insurer to determine the premium for an insured.

20 (8) "Rating plan" means a rule used by an insurer to
21 calculate:

22 (a) the premium for an insured; and

23 (b) the parameter values used in such calculation
24 after application of classification premium rates to units
25 of exposure.

1 (9) "Renewal" means an agreement between an insurer
2 and an insured to extend or continue an existing insurance
3 policy for 90 days or more.

4 Section 3. Midterm cancellation. (1) An insurer may
5 not cancel an insurance policy before either the expiration
6 of the agreed term or 1 year from the effective date of the
7 policy or renewal date, whichever is less, except:

8 (a) for reasons specifically allowed by statute;

9 (b) for failure to pay a premium when due; or

10 (c) on grounds stated in the policy which pertain to
11 the following:

12 (i) material misrepresentation;

13 (ii) substantial change in the risk assumed, except to
14 the extent that the insurer should reasonably have foreseen
15 the change or contemplated the risk when the contract was
16 written;

17 (iii) substantial breaches of contractual duties,
18 conditions, or warranties;

19 (iv) determination by the commissioner that
20 continuation of the policy would place the insurer in
21 violation of this code;

22 (v) financial impairment of the insurer; or OR

23 ~~(vi) loss -- by -- the insurer -- of -- its -- reinsurance contract;~~

24 OR

25 ~~(vi) (vii) (vi)~~ any other reason approved by the

1 commissioner.

2 (2) Cancellation under subsection (1) is not effective
3 until 10 days after a notice of cancellation is either
4 delivered or mailed to the insured.

5 (3) Subsections (1) and (2) do not apply to a newly
6 issued insurance policy if the policy has been in effect
7 less than 60 days at the time the notice of cancellation is
8 mailed or delivered. No cancellation under this subsection
9 is effective until 10 days after the ~~date--of--delivery--or~~
10 ~~mailing~~ NOTICE IS DELIVERED OR MAILED TO THE INSURED.

11 (4) If a policy has been issued for a term longer than
12 1 year and if either the premium is prepaid or an agreed
13 term is guaranteed for additional premium consideration, the
14 insurer may not cancel the policy except:

15 (a) for reasons specifically allowed by statute;

16 (b) for failure to pay a premium when due; or

17 (c) on grounds stated in the policy which pertain to
18 those grounds listed in subsection (1)(c).

19 Section 4. Anniversary cancellation -- anniversary
20 rate increases. (1) An insurer may issue a policy for a
21 term longer than 1 year or for an indefinite term if the
22 policy contains a clause that allows cancellation by the
23 insurer if the insurer gives notice 30 days prior to an
24 anniversary date.

25 (2) If a policy has been issued for a term longer than

1 1 year and for additional premium consideration an annual
2 premium has been guaranteed, the insurer may not increase
3 the annual premium for the term of that policy.

4 Section 5. Nonrenewal -- renewal premium. (1) An
5 insured has a right to reasonable notice of nonrenewal.
6 Unless otherwise provided by statute or unless a longer term
7 is provided in the policy, at least 30 days prior to the
8 expiration date provided in the policy, an insurer who does
9 not intend to renew a policy beyond the agreed expiration
10 date shall mail or deliver to the insured a notice of such
11 intention. The insurer shall also mail or deliver a copy to
12 the insured's agent.

13 (2) An insurer shall give notice of premium due not
14 more than 60 days or less than 10 days before the due date
15 of a renewal premium. The notice must clearly state the
16 effect of nonpayment of the premium on or before the due
17 date.

18 (3) Subsections (1) and (2) do not apply if:

19 (a) the insured has obtained insurance elsewhere, has
20 accepted replacement coverage, or has requested or agreed to
21 nonrenewal; or
22 (b) the policy is expressly designated as
23 nonrenewable.

24 Section 6. Renewal with altered terms (1) If an
25 insurer offers or purports to renew a policy but on less

1 favorable terms, at a higher rate, or at a higher rating
 2 plan, the new terms, rates, or rating plan take effect on
 3 the policy renewal date only if the insurer has mailed or
 4 delivered notice of the new terms, rates, or rating plan to
 5 the insured at least 30 days before the expiration date. If
 6 the insured has not been so notified, he may cancel the
 7 renewal policy within 30 days after receiving it THE NOTICE.
 8 The insured INSURER shall continue or-terminate coverage FOR
 9 A PERIOD OF not less than 30 days after mailing or delivery
 10 of the notice. If the insured terminates the policy within
 11 the 30-day period, the insurer shall calculate earned
 12 premium pro rata based upon the prior policy's rate. The new
 13 rate is effective only after the required 30-day
 14 notification period has been met. If the insured does not
 15 terminate the policy, the premium increase and other changes
 16 are effective the day following the prior policy's
 17 expiration or anniversary date.

18 (2) This section does not apply if:

19 (a) the change is a rate or rating plan filed with the
 20 commissioner and applicable to the entire classification or
 21 classification system to which the policy belongs; or
 22 (b) the increase in the rate or the rating plan, or
 23 both, results from a classification change based on the
 24 altered nature or extent of the risk insured against.

25 Section 7. Information about grounds of nonrenewal.

1 (1) If an insured questions the facts upon which an
 2 insurer's decision to cancel or not renew is based, the
 3 insurer shall mail or deliver such information TO THE
 4 INSURED within 15 working days of receiving a written
 5 request from the insured. A notice is not effective unless
 6 it contains adequate information about the insured's right
 7 to make the request.

8 (2) This section does not apply if the grounds for
 9 cancellation or nonrenewal is nonpayment of the premium and
 10 the notice so states.

11 Section 8. Homeowners insurance not affected by
 12 day-care operations. (1) No insurer writing homeowners
 13 insurance in this state may deny an applicant homeowners
 14 insurance or cancel or refuse to renew a homeowners
 15 insurance policy covering a dwelling located in this state
 16 for the principal reason that an insured under the policy
 17 operates at the insured location a day-care facility, as
 18 defined in 53-4-501, that satisfies the requirements of
 19 53-4-508 or 53-4-509.

20 (2) This section does not prevent an insurer from
 21 excluding or limiting coverage with respect to liability or
 22 property losses arising out of an insured's business
 23 pursuits, including those related to the operation of a
 24 day-care facility.

25 Section 9. Unfair trade practices. (1) The failure of

1 an insurer to comply with [sections 3 through 8] constitutes
2 an unfair trade practice under 33-18-1003.

3 (2) Midterm premium increases and policy coverage
4 reductions not in compliance with [sections 1 through 8]
5 that are attempted or executed constitute unfair trade
6 practices under 33-18-1003.

7 Section 10. Extension of authority. Any existing
8 authority of the commissioner of insurance to make rules on
9 the subject of the provisions of this act is extended to the
10 provisions of this act.

11 Section 11. Codification instruction. Sections 1
12 through 9 are intended to be codified as an integral part of
13 Title 33, and the provisions of Title 33 apply to sections 1
14 through 9.

15 Section 12. Severability. If a part of this act is
16 invalid, all valid parts that are severable from the invalid
17 part remain in effect. If a part of this act is invalid in
18 one or more of its applications, the part remains in effect
19 in all valid applications that are severable from the
20 invalid applications.

-End-



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